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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 285 (GBD)

5 LAURENCE F. DOUD III,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.
9 January 19, 2022
9:45 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: NICOLAS T. ROOS

17 ALEXANDRA ROTHMAN

THOMAS S. BURNETT

18 Assistant United States Attorneys

19 ROBERT C. GOTTLIEB

DERRELLE M. JANNEY

20 PAUL R. TOWNSEND

Attorneys for Defendant

21 Also Present: Sunny Drescher

22 Jacqueline Hauck

Paralegal Specialists

23 Special Agent George Burdzy, DEA

Investigator Kathleen Whitmore, DEA

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1 (Case called)

2 (Trial resumed)

3 (In open court; jury not present)

4 DEPUTY CLERK: 19 Cr. 285, *United States v. Laurence*
5 *Doud*.

6 THE COURT: We're still waiting for a number of
7 jurors. Anything we need to address before we go to the next
8 witness?

9 MR. GOTTLIEB: Not from the defense, your Honor.

10 MR. ROOS: Nothing from the government. I know I've
11 asked this, is it going to be everyday that we go till about
12 12:30, 1:00 and then end at five?

13 THE COURT: Yes.

14 MR. ROOS: I wasn't sure if yesterday when we took a
15 little brief break, if that is your Honor's general practice or
16 if that was to deal with the objection.

17 THE COURT: It's my general practice to give a
18 midmorning break and a midafternoon break.

19 MR. ROOS: Okay.

20 THE COURT: Approximately how many witnesses do you
21 think we might be able to get through today?

22 MR. ROOS: We're thinking three. The first one, the
23 government's direct is somewhere between 30 and 45 minutes.
24 The second one is probably a few hours, and the third is pretty
25 short, like under 30 minutes.

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1 THE COURT: You have approximately in total a dozen
2 witnesses?

3 MR. ROOS: That's right, your Honor. I would say, I
4 think in terms of say we get to those three, we'll be through
5 four of the twelve. There's a few that are long that are still
6 coming up, but there's also a few that are short, so I think
7 we'll be on a good pace if we can make it through all three of
8 these today.

9 THE COURT: You think it's possible we might be able
10 to be on schedule if we get through the two or three witnesses
11 today?

12 MR. ROOS: Yes, your Honor. I think if we can finish
13 these three today, I think there's a good shot tomorrow we can
14 also do three, and then it's possible Friday we'll have a
15 longer witness, Friday or Monday.

16 THE COURT: You may even rest by the end of next week?

17 MR. ROOS: I guess today will give us a better sense
18 of it. I think there's a good chance if we're able to
19 accomplish what we're talking about today.

20 THE COURT: I think our jurors are here. Jury
21 entering.

22 (Jury present)

23 THE COURT: Now, ladies and gentlemen, I think we are
24 on schedule to finish the testimony within three weeks or less.
25 I'm going to still see if we can move forward efficiently and

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1 get ahead of schedule. But at this point, I think we're on
2 schedule, not behind schedule, so we'll proceed with the next
3 witness.

4 Government, call your next witness.

5 MR. BURNETT: Yes, your Honor. The government calls
6 Christopher Masseth. We'll be reading a couple of stipulations
7 before he testifies.

8 THE COURT: Sure.

9 MR. BURNETT: Before Mr. Masseth takes the stand, the
10 government first offers Government Exhibit 1003, which is a
11 stipulation between the parties about certain RDC documents and
12 data.

13 THE COURT: Any objection?

14 MR. TOWNSEND: No, your Honor.

15 THE COURT: It will be admitted into evidence.

16 (Government's Exhibit 1003 received in evidence)

17 MR. BURNETT: Mrs. Hauck, can you publish 1003 and
18 turn to page 4.

19 As paragraph 8 of the stipulation states, the records
20 in Government Exhibits 201 through 251, 255 through 262, 267
21 through 271, 275 and 277 through 279, are records of regularly
22 conducted activity that were made at or near the time of
23 occurrence of the matters set forth or from information
24 transmitted by a person with knowledge of those matters, kept
25 in the course of regularly conducted activity of RDC and made

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1 by the regularly conducted activity of RDC as a regular
2 practice. Those materials are defined more specifically in the
3 stipulation, but the government offers the government exhibits
4 listed here on Government 1003.

5 THE COURT: Any objection?

6 MR. TOWNSEND: No, your Honor.

7 THE COURT: Those records will be admitted as business
8 records.

9 (Government's Exhibits 201-251, 255-262, 267-271,
10 275, 277-279 received in evidence)

11 MR. BURNETT: Thank you. Ms. Hauck, you can take this
12 down, and the government would also like to offer Government
13 Exhibit 1002, which is another stipulation between the parties.

14 MR. TOWNSEND: No, objection.

15 THE COURT: It will be admitted into evidence.

16 (Government's Exhibit 1002 received in evidence)

17 MR. BURNETT: Ms. Hauck, if could you please pull that
18 on the screen as well. This stipulation applies to a number of
19 government exhibits listed in the second paragraph.
20 Specifically, Government Exhibits 1 through 67, 101 through
21 111, 272 through 274 and 276.

22 And the second page of the stipulation says that the
23 parties agree that these exhibits are admissible at trial if
24 offered subject to objections for hearsay, relevance or under
25 Rule 403.

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Masseth - Direct

1 At this time, the government offers the exhibits that
2 are listed on the stipulation.

3 THE COURT: Any objection at this time?

4 MR. TOWNSEND: No, your Honor.

5 THE COURT: They will be admitted into evidence.

6 (Government's Exhibits 1-67, 101-11, 272-274, 276
7 received in evidence)

8 MR. BURNETT: Thank you. That's all. The government
9 would like to call Mr. Masseth.

10 CHRISTOPHER MASSETH,

11 called as a witness by the government,

12 having been duly sworn, testified as follows:

13 THE COURT: You can inquire.

14 DIRECT EXAMINATION

15 BY MR. BURNETT:

16 Q. Good morning, Mr. Masseth. Where are you from?

17 A. Rochester, New York.

18 Q. How old are you?

19 A. Forty-two.

20 Q. How far did you go in school?

21 A. I got my master's degree.

22 Q. Starting before your master's, where did you go to college?

23 A. My undergrad was at Robert Wesleyan College.

24 Q. Where is that?

25 A. Just outside of Rochester.

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Masseth - Direct

1 Q. And your master's, what was that in?

2 A. Business Administration, MBA.

3 Q. Now, are you familiar with a company called Rochester Drug
4 Co-Operative?

5 A. Yes.

6 Q. Does that sometimes go by RDC for short?

7 A. Yes, it does.

8 Q. How are you familiar with the company?

9 A. I worked there for about 23 years.

10 Q. What jobs did you have at RDC?

11 A. Quite a few. I started out in the warehouse, the day crew,
12 which was putting away product and receiving product. And I
13 also worked occasionally on the night crew, which was picking
14 orders and shipping product, was eventually promoted into the
15 office where for a short time I did data entry for price
16 changes.

17 And after that I was promoted to manage all the
18 branded RX pharmaceuticals, and after that I was promoted up to
19 general manager and finally the title was changed to chief
20 operating officer.

21 Q. So I want to focus right now, and for your testimony, on
22 the time period between 2012 and early 2017, what was the job
23 that you held during that period?

24 A. During that time I managed. The title was manager branded
25 RX and trade relations.

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Masseth - Direct

1 Q. Who was in charge of RDC during those years?

2 A. Larry Doud.

3 Q. Do you recognize Mr. Doud in the courtroom today?

4 A. Yes, I do.

5 Q. Could you please point him out to the jury and identify him
6 by a piece of clothing he's wearing?

7 A. He's kind of straight ahead from me. He's got a black suit
8 coat with a light tie on and black glasses.

9 MR. BURNETT: Your Honor, may the record reflect that
10 the witness has identified the defendant.

11 THE COURT: The record will so reflect.

12 Q. What was the defendant's title when you worked at RDC?

13 A. He was the chief executive officer, CEO.

14 Q. What was your understanding of his role as the CEO?

15 A. He oversaw all aspects of the company. He was the highest
16 in command, reported directly to the board of director.

17 Q. Do you know when he started out as CEO?

18 A. I do not. I know he was CEO when I started at the company,
19 so before I came to RDC he was the CEO.

20 Q. When did he stop being the CEO?

21 A. March 31st, 2017.

22 Q. Now, we'll come back to Mr. Doud in a minute. But first
23 I'd like to ask you a few questions about RDC as a company.

24 What kind of company was Rochester Drug Co-Operative?

25 A. We were a full-line pharmaceutical distributor.

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Masseth - Direct

1 Q. What does that involve?

2 A. We purchased product directly from several different
3 manufacturers and shipped them to independent pharmaceuticals
4 or pharmacies.

5 Q. Let's take that one at a time. When you say you brought
6 product from manufacturers, what kinds of products did RDC buy?

7 A. Again, we're considered what was called a full-line
8 distributor, so we stocked over-the-counter products, health
9 and beauty products, durable medical equipment,
10 pharmaceuticals, both branded and generic pharmaceuticals,
11 basically anything you would buy in the pharmacy, except
12 grocery goods and gift type items.

13 Q. And you said that RDC sold those products to independent
14 pharmacies, what are independent pharmacies?

15 A. Independent pharmacies are non-chains, so they're very
16 similar to like a Walgreens and a CVS, but they're usually
17 single owner, sometimes called mom and pop pharmacies, but
18 usually non-chains, one single location.

19 Q. During the 2012 to early 2017 time period, about how many
20 pharmacies did RDC sell to?

21 A. About 1500.

22 Q. Now, a moment ago you mentioned that RDC was a full-line
23 distributor, do you recall that?

24 A. Yes.

25 Q. What do you mean when you say a full-line distributor?

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Masseth - Direct

1 A. Again, just that we stocked like a breadth of products, not
2 just like one category, so from hair products like shampoo to
3 toothpaste to prescription products, generic, branded,
4 refrigerated products, controls, narcotics.

5 Q. From your experience, why was RDC a full-line distributor
6 as opposed to specializing in some particular type of products?

7 A. We really wanted to be a single source for our customers,
8 for the pharmacies, with the goal of having the pharmacies
9 primarily purchase everything from us instead of competitors
10 and multiple locations.

11 Q. What was the advantage of having pharmacies buy everything
12 from RDC as opposed to going to competitors for certain
13 products?

14 A. It was really a way to try and keep the customer. If we
15 didn't have a product and they had to buy it from somebody
16 else, most likely our competitors -- well, a lot of the
17 competitors required them to sign some sort of customer
18 contract which could tie them into the business for a year
19 plus, multiple years, or they had order minimums. So if we
20 didn't have an item, they would have to purchase that item and
21 more, which ultimately meant lost sales and the possibility of
22 losing a customer.

23 Q. Now, you mentioned that one type of product RDC sold was
24 prescription drugs; is that right?

25 A. Correct.

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Masseth - Direct

1 Q. What kind of prescription drugs did RDC sell to pharmacies?

2 A. All different prescription items that we could get access
3 to. Again, branded, generic products, controls, narcotics,
4 injectables, any pharmaceutical item that was considered a
5 retail product that a patient would get a script filled in a
6 pharmacy setting.

7 Q. When you say controls and narcotics, what do you mean by
8 that?

9 A. Those are items that the DEA schedules and classifies.
10 They're usually more addictive or have risk profiles, so the
11 DEA classifies them differently than every other item.

12 Q. What are some examples of controls and narcotics that RDC
13 sold between 2012 and early 2017?

14 A. There's a lot of pain management, a lot of like sleep
15 medication or narcotics, opioids, etc.

16 Q. Now, earlier in your testimony you referred to the company
17 as Rochester Drug Co-Operative; is that right?

18 A. Yes.

19 Q. What does the co-operative part mean?

20 A. We were owned by a subset of our customer base. We sold to
21 about 1500 pharmacies, but about 230 of them actually owned
22 RDC.

23 Q. Those owners, did they have something to represent their
24 ownership?

25 A. Yes, they would have a share, like a stock certificate

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Masseth - Direct

1 showing that they have an ownership in the company.

2 Q. Between 2012 and early 2017, to your knowledge were all of
3 RDC shareholders pharmacy customers?

4 A. For the most part, I believe so, yes.

5 Q. What, if any, financial benefits came along to pharmacies
6 for being shareholders in RDC?

7 A. There's the value of the individual share which is the book
8 value of the company if they were to redeem it or sell it back
9 to the company. And then beyond that, any profits that the
10 company earned would be paid out via a dividend yearly.

11 Q. Generally speaking, what was that dividend based on?

12 A. So the dividend was based on the company's profits. So
13 whatever the profit was, was presented to the board, and the
14 board would determine how much to be paid out via the dividend.
15 And from that total amount, they took the total of the
16 shareholders' purchases and divided it into the determined
17 dividend amount to create a percentage, and each shareholder
18 was then paid a percentage equally. The dollar amount would be
19 different because it was based on their total purchases.

20 Q. Now, where was Rochester Drug Co-Operative headquartered?

21 A. In Rochester, New York.

22 Q. Did you work at the headquarters?

23 A. Yes, primarily.

24 Q. Did the defendant typically work at the headquarters?

25 A. Yes.

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Massetth - Direct

1 Q. I'm going to show you what's been marked for identification
2 as Government Exhibit 612.

3 And Ms. Hauck, if you could please show that to the
4 attorneys, the Court and the witness.

5 Do you recognize this?

6 A. Yes, I do.

7 Q. What is it?

8 A. That is our Rochester, New York facility.

9 Q. Is it a fair and accurate photograph of that facility?

10 A. Yes.

11 MR. BURNETT: The government offers 612 in evidence.

12 THE COURT: Any objection?

13 MR. TOWNSEND: No objection.

14 THE COURT: It will be admitted into evidence.

15 (Government's Exhibit 612 received in evidence)

16 MR. BURNETT: Permission to publish it to the jury,
17 your Honor.

18 THE COURT: Yes.

19 MR. BURNETT: Ms. Hauck, could you please publish it.

20 Q. Mr. Masseth, what does this photograph show?

21 A. That's our building that we built in 2001 in Rochester, New
22 York on Jetview Drive.

23 Q. Can you describe how the building is laid out?

24 A. Yes. The parking lot that you see is in front of the
25 building, that's where the employees would park, and the part

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Masseth - Direct

1 with the windows and that cream color roofline is our office
2 area. And then if you look attached to it in the back where
3 the RDC logo is, that is the start of the warehouse where all
4 the product was stored.

5 Q. So let's take those parts of the building one at a time
6 starting with the warehouse.

7 Can you give just a general sense of how much space
8 the warehouse took up the building?

9 A. It was the bulk of the facility as you can kind of tell
10 from the picture. It had high ceilings, so we were able to
11 store skids of product and what we called the case section so
12 we could stack skids upwards.

13 It also had a large mezzanine area that held loose
14 product underneath and floor racks for picking, and on the
15 mezzanine above, it held also loose product and static shelves,
16 kind of like you would store product at home.

17 Q. Now, turning to the office, you said that was in the front
18 part of the building?

19 A. Yes.

20 Q. How many floors was the office?

21 A. Only one floor.

22 Q. Could you describe in general terms how it was laid out?

23 A. It was kind of like a big square, so the part where the
24 windows are, the outer portion had individual offices with
25 windows. The center of the square, if you will, is primary

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Masseth - Direct

1 cubicles. There's a small area of enclosed offices in the
2 center also, and the part where it connected to the warehouse
3 was a shared cafeteria between the office and the warehouse
4 space.

5 Q. Now, during the period we've been focused on between 2012
6 and early 2017, about how many employees worked in the office
7 part of the headquarters?

8 A. Roughly 50.

9 Q. So I'd like to talk about some of those people.

10 Ms. Hauck, if you could please take this photograph
11 down and show to just Mr. Masseth, the attorneys and the Court
12 the following exhibits, 601, 602, 603, 604, 605, 606, 611, 625
13 and 626.

14 Mr. Masseth, without getting into the specific of each
15 photograph, do you recognize what those photographs are?

16 A. Yes, our former RDC employees.

17 Q. And are they fair and accurate representations of those RDC
18 employees?

19 A. Yes.

20 MR. BURNETT: Your Honor, the government offers
21 Exhibits 601 through 606, 611, 625 and 626.

22 THE COURT: Any objection?

23 MR. TOWNSEND: No objection.

24 THE COURT: They'll be admitted into evidence.

25 (Government's Exhibits 601-606, 611, 625, 626 received

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Masseth - Direct

1 in evidence)

2 MR. BURNETT: Ms. Hauck, if you could please publish
3 Government 601.

4 Q. Who's the person in this photograph?

5 A. Larry Doud.

6 Q. That's the defendant?

7 A. Correct.

8 Q. Did he work in that Rochester headquarters that you
9 discussed earlier?

10 A. Yes, he did.

11 Q. What part of the building did he work in?

12 A. In the front of the building.

13 MR. BURNETT: Ms. Hauck, if could you turn now to
14 Government Exhibit 602.

15 Q. Who's this person?

16 A. Joseph Joe Brennan.

17 Q. What was his job at RDC between 2012 and early 2017?

18 A. I believe it started as general manager, and then his title
19 also changed to chief operating officer, COO.

20 Q. Based on your time at the company, could you give a general
21 description of what that job involved?

22 A. He oversaw the operations of the company, the day-to-day
23 pick, pack, ship and receiving.

24 Q. When you say pick, pack, ship, what do you mean by that?

25 A. We delivered six days a week to our pharmacies, so the

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Masseth - Direct

1 orders would come in, the warehouse would pick the orders and
2 then we would ship them out nightly to the individual
3 pharmacies.

4 Q. Who did Mr. Brennan report to at the company?

5 A. He reported to Larry Doud and I believe the board.

6 MR. BURNETT: Let's turn to Government 611, please.

7 Q. Who's in this photograph?

8 A. Ed Kirker.

9 Q. What was his job at RDC?

10 A. He was -- I don't remember the exact title name, but
11 director of purchasing or procurement.

12 Q. And what did that job involve?

13 A. So during that time, I reported directly to Ed. He oversaw
14 the purchasing department which was kind of broken into four
15 different categories and our contracts and pricing.

16 Q. Who did he report to?

17 A. He reported into Joe Brennan and ultimately Larry.

18 Q. Now, let's take this down and publish Government Exhibit
19 604, please.

20 Who's the person who's pictured here?

21 A. That's Lanny Doud.

22 Q. What, if any, relationship does he have to the defendant?

23 A. That's Larry's son.

24 Q. Was he at RDC at some point during the period between 2012
25 and early 2017?

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Masseth - Direct

1 A. Yes, I believe so. I don't recall when he left, but, yes.

2 Q. What was his job at the company?

3 A. He was our director of sales in charge of the sales
4 department.

5 Q. And what did he do in that role?

6 A. So all the salesmen oversaw him and he -- sorry. He
7 oversaw all of the salesmen and was kind of the customer facing
8 side of the company.

9 Q. And when you say sales, who are the customers in this
10 context?

11 A. That's the independent pharmacies.

12 Q. Who did he typically report to?

13 A. He reported I believe to Joe and then to Larry.

14 Q. Now, let's turn to Government Exhibit 626. Who's the
15 person pictured here?

16 A. That's Richie Cullen.

17 Q. What did he do at RDC during the time period we've been
18 discussing?

19 A. So he was in charge of what we call the Metro, New York
20 territory. The salesmen in kind of this area down here
21 reported directly in to him, and eventually he was promoted to
22 GM when we opened our Fairfield, New Jersey facility and worked
23 in that facility but still was mainly on the sale side of the
24 company.

25 Q. Who were the people he reported to at RDC?

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Masseth - Direct

1 A. I believe he reported to Lanny and then Joe and Larry.

2 Q. Let's turn now to Government Exhibit 603. Who's pictured
3 here?

4 A. Bill Pietruszewski, I think that's how you say it.

5 Q. What was Mr. Pietruszewski's job at RDC between 2012 and
6 early 2017?

7 A. He kind of had a dual role. He oversaw the operations and
8 the compliance department. Eventually when we opened Fairfield
9 New Jersey, he moved down to Fairfield and oversaw the
10 operations in Fairfield and compliance.

11 (Continued to next page)

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Massetth - Direct

1 Q. Now, those jobs in operations and compliance, did he have
2 those at the same time?

3 A. Yes.

4 Q. Let's take them one at a time. What did the operations
5 role involve?

6 A. So the operations was primarily the day shift, which was
7 the incoming product, and just making sure that everything was
8 received as quickly as possible, and put away correctly.

9 Q. And now at the same time that he was doing that operations
10 role, what was his compliance job?

11 A. So, he oversaw the compliance department for the controls
12 and narcotics, setting up new customers, and reviewing orders
13 being shipped.

14 Q. Who were the people who Mr. Pietruszewski reported to in
15 RDC?

16 A. So he reported to Joe Brennan and then Larry Doud.

17 Q. Let's turn ahead now to Government Exhibit 605. Who is the
18 person in this photograph?

19 A. Jessica Pompeo.

20 Q. Was she at RDC for some of the time between 2012 and early
21 2017?

22 A. Yes.

23 Q. What was her role?

24 A. She worked in the compliance department.

25 Q. Is that the department that Mr. Pietruszewski ran?

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Masseth - Direct

1 A. Correct.

2 Q. Now, who were some of the people who she reported to when
3 she worked in the compliance department?

4 A. So she reported directly to Bill Pietruszewski and then
5 Joe, and ultimately Larry.

6 Q. Now let's turn to Government Exhibit 625. Do you recognize
7 the person here?

8 A. Yes.

9 Q. Who is this?

10 A. Amy Skibickyi.

11 Q. What was her job at RDC?

12 A. She also worked in compliance.

13 Q. Did she have a similar role in reporting structure to
14 Jessica Pompeo who you just talked about?

15 A. Yes, she did.

16 Q. Let's turn ahead to Government Exhibit 606. Who is the
17 person pictured here?

18 A. Julius Morton.

19 Q. Was he at RDC for at least some of the time between 2012
20 and early 2017?

21 A. Yes, he was.

22 Q. What was his job?

23 A. He was a field auditor.

24 Q. What's your understanding of what that means?

25 A. So, he would visit, do onsite visits to the different

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Masseth - Direct

1 pharmacies that we sold to, to do compliance reviews at the
2 pharmacy level.

3 Q. Who were the people he reported to?

4 A. I believe he reported to Bill Pietruszewski and then Joe
5 and Larry.

6 MR. BURNETT: Thank you. You can take that photo
7 down.

8 Q. I'd like to turn back to Mr. Doud, the defendant. When he
9 was the CEO during that period between 2012 and early 2017, how
10 often was he around that main office at Rochester?

11 A. When he was in Rochester, he was usually in the office. He
12 would also do customer visits and stuff. And he also spent
13 time in Florida, so, it was just when he was in Rochester he
14 was in the office.

15 Q. About what part of the year was he in Rochester for?

16 A. I'd say about half -- more than half the year.

17 Q. How often did you communicate with him, either in person or
18 otherwise?

19 A. On a regular basis.

20 Q. Could you describe his management style?

21 A. He was very involved with all departments. You know, I
22 talked to him on a regular basis. I think he, he talked to
23 every employee at the company on a regular basis.

24 Q. What gave you that impression?

25 A. Just being there, you know, you would see him go out into

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Masseth - Direct

1 the warehouse, and he knew every employee's name. He took the
2 time to say hi to everybody, and, you know, have conversations
3 with them.

4 Q. Based on your seeing him around the company, how involved
5 was he in the day-to-day operations of what RDC did?

6 A. I believe he was fairly involved.

7 Q. Now, what, if any, reports did Mr. Doud receive about what
8 was going on at the company?

9 A. He received what we called green bar reports. Daily, quite
10 a few a stack of papers if you will.

11 Q. Have you received those green bar reports before?

12 A. Yes, I got them on a regular basis, daily, too.

13 Q. What kind of information was in those green bar reports?

14 A. I guess the best way to describe it is like an Excel
15 printout, you know, the ones that I received were primarily
16 based on the sales last night and items that were omitted,
17 meaning, we didn't have the inventory but a customer tried to
18 order it, so I could try to replace the inventory. I got
19 reports on the inventory levels, and what was on hand,
20 different reports on manufacturers. But there is a multitude
21 of reports.

22 Q. What were some of the ways that the defendant communicated
23 with his employees at the company?

24 A. Primarily in person. You know, he would walk down and have
25 the conversation with the different employees. If they weren't

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Masseth - Direct

1 around, he would leave a note for them, you know.

2 Q. You mentioned those notes. Why do those notes stand out to
3 you?

4 A. We called them blue notes. It was a blue sticky pad, and
5 he would leave them on your desk or your chair and you would
6 just follow up on them immediately.

7 Q. How often did you see people around the company receiving
8 those blue notes?

9 A. It's hard to say. I mean, I wouldn't necessarily say
10 daily. But it was often enough that everybody knew about them
11 and would know if you got a blue note you would -- you know,
12 people would joke about it.

13 Q. Now, based on your time at RDC, how often was the defendant
14 involved in decisions about the company's sales and operations?

15 A. Again, I think he was very involved.

16 Q. In your experience working at the company, were employees
17 typically free to make decisions that would affect sales
18 without the defendant's input?

19 A. I guess -- it depends on how big of a decision it was. You
20 know, on little stuff, I think people were free to make
21 decisions, but if it was something, you know, bigger, they
22 would either just let him know so he was in the loop, or, you
23 know, ask what he thought about it before the final decisions
24 were made.

25 Q. What are some kinds of things that would constitute bigger

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Massetth - Direct

1 decisions?

2 A. We were very customer focused, you know, the customer was
3 number one. And if it impacted a customer, you know, our
4 customers were pretty vocal too. So if there was anything
5 where they might call, you would ask or at least let him know
6 to say, hey, you might get a call from this customer.

7 Q. Now, when you were at RDC, did you hear the defendant talk
8 about what, if any, parts of the business that he was focused
9 on?

10 A. Again, customers, very customer focused. Sales focused.
11 Those were probably the two main.

12 Q. Let's take those one at a time. When you say he was sales
13 focused, what gave you that impression?

14 A. I think it goes back to what I was saying earlier, that,
15 you know, we wanted to always have the products that the
16 customer may need. With the concern if we didn't, we could
17 potentially lose the customer. We definitely lost the sale.
18 You know, if a pharmacy ultimately is providing a product to a
19 patient, and that patient can't wait. So, if we didn't have
20 it, they would just buy it from a competitor, and again, they
21 would have to buy a multitude of product, not just that one, to
22 make the minimum. And put us at risk of losing a customer.
23 So, it was make sure you have the product so we can sell it.
24 Q. I want to switch from the sales to the customer focus side
25 that you just mentioned, and I'd like to show you what's

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Masseth - Direct

1 already been offered in evidence as Government Exhibit 271.

2 With the Court's permission, I'd like to publish that
3 for the jury.

4 THE COURT: Yes.

5 Q. Do you recognize this document?

6 A. Yes, I do.

7 Q. What is it?

8 A. I believe it was either in our handbook or in one of our
9 annual shareholders booklet.

10 It disappeared.

11 Q. Thank you. Sorry.

12 A. It was our mission statement.

13 Q. Now, I'd like to focus on the second to last paragraph, so
14 the paragraph above the three squiggly lines that are there.

15 A. Okay.

16 Q. Do you see that the beginning of the first sentence there
17 refers to, says "Full line distribution is our core business"?

18 A. Yes.

19 Q. And I think you mentioned this briefly earlier, but again,
20 what is full line distribution?

21 A. It's having the wide breadth of products that a pharmacy
22 would need.

23 Q. When you were at the company, did you hear the defendant
24 talk about RDC being a full line distributor?

25 A. Yes.

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Massetth - Direct

1 Q. What did he say about it?

2 A. Just, the importance of having all the different items,
3 whether it was a cane or a wheelchair, or, you know, hair
4 products, it was make sure we had everything that the customer
5 needed.

6 Q. Again, what was the importance when he talked about it of
7 RDC having all the products the customer needed?

8 A. To try and be the sole provider for that customer. Make
9 sure they didn't buy product elsewhere.

10 Q. Now let's look at the last paragraph, and Ms. Hauck, if you
11 can please blow that up just so it's easier to read. The very
12 last paragraph in italics.

13 Could you please read the first line of this.

14 MR. TOWNSEND: Your Honor, has this been admitted into
15 evidence?

16 MR. BURNETT: Yes.

17 A. Okay. "CEO Larry Doud's goal is to make RDC the knight in
18 shining armor for independent pharmacy."

19 Q. When you were at the company, did you hear the defendant
20 refer to RDC being the knight in shining armor for independent
21 pharmacy?

22 A. Yes.

23 Q. What did you understand him to mean by that?

24 A. Well, it became our logo. If you look at the top of the
25 page, the horse with the lance. It was, again, putting

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Masseth - Direct

1 customer first, trying to be everything that we could for
2 customer. You know, that's what differentiated us from our
3 competitors was high customer service and being flexible and
4 there to support their business.

5 Q. When you say being flexible, could you give some examples
6 of, in your role at the company, how RDC was flexible for
7 customers?

8 A. In my role?

9 Q. Sorry. In roles that you saw at RDC.

10 A. I mean, I think it was just all aspects of customer
11 service. You know, every employee was in customer service, if
12 you will. I got calls from the customer, every employee would
13 answer calls from the customer, responding to them as quickly
14 as possible. Not -- you know, having somebody that answered
15 the phone, they didn't go through a teleprompt when they called
16 in. And being flexible in payment terms or quick deliveries,
17 you know, will call orders or trying to get product to them
18 quicker. Or if there is a product that we didn't have,
19 building a relationship with that manufacturer to try to get
20 access to the product, and having it available for them.

21 MR. BURNETT: Thank you, Ms. Hauck. You can take that
22 down.

23 Q. So I want to wrap up by asking you just a few concluding
24 questions.

25 I think you mentioned from 2012 to early 2017, RDC had

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Masseth - Direct

1 a compliance department; is that right?

2 A. Yes.

3 Q. Were you part of that compliance department?

4 A. I was not.

5 Q. Were you involved in participating in making compliance
6 decisions between 2012 and early 2017?

7 A. No.

8 Q. How much were you looped into the actual day-to-day work of
9 what was going on in the compliance department during that
10 time?

11 A. The day-to-day, very little.

12 Q. Did there come a time when you learned that the DEA was
13 investigating RDC?

14 A. Yes.

15 Q. Around when was that?

16 A. I believe it was end of 2016.

17 Q. Now, do you still work at RDC?

18 A. I do not.

19 Q. When did you leave the company?

20 A. It was March of '21, last year.

21 Q. Why did you leave?

22 A. The company closed.

23 MR. BURNETT: No further questions, your Honor.

24 THE COURT: Cross-examination.

25 MR. TOWNSEND: Thank you, your Honor.

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Masseth - Cross

1 CROSS-EXAMINATION

2 BY MR. TOWNSEND:

3 Q. Good morning.

4 A. Good morning.

5 Q. Is it "Masseth"?

6 A. Yes, that's fine.

7 Q. I'd like to touch first on just some of the general topics
8 that you testified on, on direct.

9 Do you remember being asked to give a couple general
10 examples of the types of products that RDC would have in the
11 warehouse?

12 A. Yes.

13 Q. I think you noted over-the-counter products as one?

14 A. Correct.

15 Q. That would be Tylenol, Advil; things like that?

16 A. Yes.

17 Q. And you said health and beauty products. So, face creams,
18 soaps; things like that?

19 A. Correct.

20 Q. You said durable medical equipment. Can you explain what
21 that is?

22 A. That would be canes, wheelchairs, walkers, knee braces,
23 something for, like, physical injuries, if you will.

24 Q. Then you said pharmaceuticals, branded and generics?

25 A. Yes.

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Masseth - Cross

1 Q. You said you had 1500 pharmacy customers, right?

2 A. Roughly. I don't recall the exact number.

3 Q. So, the products that you mentioned for all these
4 customers, the ones that came to mind, none of those are
5 controlled substances, right?

6 A. The ones just listed, no.

7 Q. Right. And that's because the bulk of what was kept in the
8 warehouse for RDC was non-controlled substances, right?

9 A. Correct.

10 Q. That was the vast majority of what RDC sold to customers,
11 right?

12 A. Yes.

13 Q. You did mention that RDC does sell controlled substances,
14 right?

15 A. Yes.

16 Q. And RDC has a DEA license to do that, right?

17 A. Yes.

18 Q. Or did, excuse me, during 2012 to 2017. I know you
19 mentioned the company shut down. But during that time period,
20 it had a DEA license?

21 A. Yes, we did.

22 Q. I want to talk again about the dividend that you mentioned
23 briefly.

24 So the dividend was a way to pay back the customer
25 shareholders at the end of the year, right?

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Massetth - Cross

1 A. Correct.

2 Q. And it was determined by RDC's profits for the year, right?

3 A. Yes.

4 Q. And those profits are a factor of both non-controlled
5 substance sales and controlled substance sales, right?

6 A. Yes, the total business.

7 Q. The total business.

8 You were asked about Bill Pietruszewski's jobs.
9 Right?

10 A. Yes.

11 Q. You said he was the dayshift operations manager and he ran
12 the compliance department, right?

13 A. Correct.

14 Q. And you described the operations role as basically making
15 sure that the inventory that came in was put in the warehouse?

16 A. Yes.

17 Q. And there was a team that did that, I assume, right?

18 A. Yes.

19 Q. Bill Pietruszewski wasn't at the truck unloading product,
20 right?

21 A. Occasionally he did, but...

22 Q. But in general, he had people that would do that?

23 A. Yes.

24 Q. Another person who was showed to you was Julius Morton. Do
25 you remember him?

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Masseth - Cross

1 A. Yes, I do.

2 Q. You testified he was a field auditor?

3 A. Yes.

4 Q. He conducted onsite visits you said?

5 A. Yes.

6 Q. That was for the compliance department?

7 A. Yes.

8 Q. And those onsite visits were to evaluate the due diligence
9 program of those customers?

10 A. Correct.

11 Q. Do you know about how many compliance audits Julius Morton
12 did while he was at RDC?

13 A. I have no idea.

14 Q. A lot though, you'd say?

15 MR. BURNETT: Objection.

16 THE COURT: Sustained.

17 Q. You were asked about Larry Doud's management style. Do you
18 remember that?

19 A. Yes.

20 Q. Isn't it a fact that you thought Larry Doud was a pretty
21 good boss?

22 A. Yes.

23 Q. You spoke at his retirement party, right?

24 A. I did.

25 Q. It was very emotional for you?

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Masseth - Cross

1 A. Yes.

2 Q. Larry Doud hired you?

3 A. Not directly, but...

4 Q. But you've known Larry Doud since you started working in
5 the warehouse?

6 A. Yes.

7 Q. You said that Doud took the time to say hi to everybody?

8 A. Yes, he did.

9 Q. When you were asked about the ability to make decisions to
10 impact certain customers with regard to sales -- do you
11 remember being asked about that?

12 A. Yes.

13 Q. And you said relatively small decisions, Larry Doud would
14 not necessarily need to be involved in?

15 A. Correct.

16 Q. And if it was something that was a little bit larger, you
17 said Larry would need to be kept in the loop?

18 A. Yes.

19 Q. You testified about the importance of having all products
20 that customers might need, right?

21 A. Yes.

22 Q. That was a big thing for Larry Doud and for RDC, to be a
23 full line distributor, right?

24 A. Yes, it was.

25 Q. You testified that the reason for that is that if RDC

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Massetth - Cross

1 didn't have a particular product, then a customer might have to
2 go elsewhere, right?

3 A. Yes.

4 Q. And they might get roped into some sort of contract where
5 they were required to buy other things from other distributors?

6 A. Yes.

7 Q. So, the idea was to have everything and anything that a
8 customer might need so that that customer would only shop at
9 RDC?

10 A. Yes.

11 Q. And again, the things you mentioned, canes, wheelchairs,
12 hair products; that's what came to mind?

13 A. All -- all the product we stocked, yes.

14 Q. All the products and the vast majority of those products,
15 again, are not controlled substances, right?

16 A. Correct.

17 Q. They are things you would buy over the counter?

18 A. We had about 25,000 different items.

19 Q. Right.

20 And you were asked questions about RDC being a knight
21 in shining armor for independent pharmacies, right?

22 A. Yes.

23 Q. You talked about how the policy that Larry Doud downward
24 instituted at RDC was a customer driven -- a customer driven
25 policy?

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Masseth - Cross

1 A. Yes.

2 Q. And if customers had complaints, they would call and
3 anybody would take the calls, right?

4 A. Correct.

5 Q. And Larry Doud would even take calls from customers, right?

6 A. Yes.

7 Q. Because that's the type of culture that RDC wanted to put
8 forward, right?

9 A. Yes.

10 Q. You were a part of that customer-first mentality?

11 A. Yes.

12 Q. Because it's important, when you are running a distributor
13 like that, to make sure that your customers don't go to a
14 competitor?

15 A. Correct.

16 Q. Now, at the end of your direct testimony, you indicated
17 that between 2012 and March of 2017, you were not involved in
18 compliance, right?

19 A. Not on the day-to-day stuff, no.

20 Q. Not on the day-to-day. You weren't sitting in daily
21 compliance meetings?

22 A. No.

23 Q. You weren't getting briefed on specific customer issues?

24 A. Only if it pertained to items that I was purchasing.

25 Q. And your particular role was you procured product from

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Masseth - Cross

1 manufacturers, right?

2 A. Correct.

3 Q. You've had conversations with Larry Doud about account
4 openings, right?

5 A. If we got usage and it was going to be a larger account and
6 may affect inventory levels, yes.

7 Q. You've heard in general Larry Doud complained that account
8 opening was taking too long?

9 MR. BURNETT: Objection.

10 THE COURT: Overruled. You can answer.

11 A. I don't recall any particular conversations, but I think
12 that would be fair to say.

13 Q. Let me see if I can refresh your recollection. If I was to
14 show you some notes of a conversation you had with the
15 government, might that refresh your recollection of what you
16 said on the topic?

17 A. Yeah, I guess.

18 MR. TOWNSEND: With your Honor's permission, I'd like
19 to show the witness Defense Exhibit E12.

20 THE COURT: Okay.

21 MR. TOWNSEND: Page 2.

22 Apologies. For the record, that's Defense Exhibit
23 E13. If you could just enlarge the section 3A.

24 Q. Mr. Masseth, does this refresh your recollection regarding
25 Larry Doud's conversations with you about making sure customers

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Massetth - Cross

1 are getting what they wanted when they want it?

2 A. I mean, I think that's what I said before, yes.

3 MR. TOWNSEND: One moment, your Honor.

4 Q. I'd like to talk to you about RDC's profit margins. Are
5 you familiar with the concept of profit margins?

6 A. Yes.

7 Q. Profit margins for RDC were affected by a number of things,
8 right?

9 A. Yes.

10 Q. So RDC would offer discounts, right?

11 A. Yes.

12 Q. And if RDC would sell a product for a discounted rate, that
13 would mean less profit for RDC, right?

14 A. Correct.

15 Q. And that applies to both controlled substance and
16 non-controlled substances?

17 A. Yes.

18 Q. And rebates could also affect profits, right?

19 A. Yes.

20 Q. Would you explain to the jury how a rebate works generally.

21 A. So there were some rebates given to pharmacies quarterly,
22 maybe more often than that, but it was based on their
23 purchases, and they might get a quarter percent on branded
24 items, and I forget the percentages on generic items, but
25 there's rebates. It was basically like a loyalty type of

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Masseth - Cross

1 rebate for continuing to use RDC.

2 Q. Just for the sake of clarity, when you're talking about
3 those percentage points, you are talking about those being off
4 the price?

5 A. Off of what they paid for previous purchased items. So,
6 yes.

7 Q. It would essentially be a lower price at the end of the
8 day?

9 A. Yup.

10 Q. And the dividend payments that you spoke about. Those
11 would also affect profits, right?

12 A. It was -- it was the profit that was paid out.

13 Q. Right. Maybe I can ask a better question.

14 So, the year-end profits would come in, and you would
15 take a portion of those profits, and give them back to the
16 shareholders as a dividend?

17 A. Correct.

18 Q. So that was money that RDC wouldn't at the end of the day
19 keep as profit. It would be returned.

20 A. Correct.

21 Q. The margins that RDC made on sales for controlled
22 substances and non-controlled substances were the same, right?

23 A. I think that's too generalized. It depends on the
24 different categories of brand and generic. But controls to
25 non-controls, in pharmaceuticals, it was similar.

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Masseth - Cross

1 Q. Do you remember having a conversation with the government
2 on March 27, 2018?

3 MR. BURNETT: Objection.

4 THE COURT: Overruled. You can answer that question.

5 A. What's that?

6 Q. Do you remember having a conversation with members of the
7 government on March 27, 2018?

8 A. Vaguely.

9 Q. Do you remember during that conversation telling them that
10 margins on controls and non-controls are the same?

11 A. That's -- when you are looking at solely RX products, that
12 would be a fair statement.

13 Q. You don't believe that one profit -- or one line is more
14 profitable than the others?

15 A. That's where -- it's more complicated than that. So,
16 durable medical equipment had a higher profit range. Along
17 with over-the-counter products. Those usually had a higher
18 profit and we were selling at cost plus.

19 And then if you look at pharmaceuticals, you have to
20 split them into two categories, branded and generics. Branded
21 items had a very low profit, if any. In most cases we sold
22 them below our cost. And it didn't matter whether it was a
23 control or non-control.

24 And then if you look at generic items, we usually sold
25 them at a cost plus, so there was a higher profit on those.

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Masseth - Cross

1 And it didn't matter if it was control or non-control.

2 But, so it depends if it was RX or non-RX, and if it
3 was RX, it depends if it was branded or generic or branded.

4 Q. But the non-pharmaceuticals, as you said, gave you the
5 highest profit?

6 A. I would -- in general, that would be fair, yes.

7 Q. I'm not asking you specifically to go through it line by
8 line, but generally speaking?

9 A. Correct.

10 Q. Isn't it true that for RDC, somewhere around 90 percent of
11 the company's profits came from non-controlled substance?

12 A. I -- I don't know for sure. But that wouldn't surprise me.

13 Q. Again, that would be products like Band-Aids and knee
14 braces?

15 A. Correct.

16 Q. Cough drops and wheelchairs?

17 A. Hmm-hmm.

18 Q. You had conversations with Larry Doud and Joe Brennan, who
19 we just heard a little bit about, regarding Linden Care, right?

20 MR. BURNETT: Objection. Hearsay, outside the scope.

21 THE COURT: Overruled. You can answer.

22 A. Okay. Yes.

23 Q. You had conversations regarding your particular concerns.

24 A. Yes.

25 Q. You were concerned about Linden Care as a financial risk to

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Masseth - Cross

1 RDC, right?

2 MR. BURNETT: Objection.

3 THE COURT: We're going to take a break and we'll
4 resolve this while we give the jury a break.

5 Don't discuss the case, keep an open mind. I'm going
6 to give you a 15-minute break.

7 (Continued on next page)

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(Jury excused)

THE COURT: You can step down.

THE WITNESS: Stay here?

THE COURT: No, you can step out.

(Witness not present)

THE COURT: I'm not sure where you're going with this.

And I'm not sure whether you're asking him about conversations with Mr. Doud, or are you asking him about conversations with other people. And I'm not clear on what the nature of the government's objection is.

So why don't I start with you. Where are you going with this?

MR. TOWNSEND: Your Honor, this case is really about how Larry Doud interacted with a number of pharmacies and what he did with regards to them. And a major pharmacy is Linden Care. It is the largest RDC customer, it is a pain management pharmacy.

And I am going to elicit from Mr. Masseth, basically, that his concern about Linden Care was only that if they actually went to a different distributor, then RDC would be sitting on a mountain of products. He wasn't concerned about diversion. He's concerned about the RDC financial implications of what their business leaving would mean.

THE COURT: His job had nothing to do with diversion. Why would one expect he would give any other answer? He's not,

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1 he testified that he was not in a position with compliance, and
2 that was not his area. So I'm not sure what way he has
3 relevant testimony to give about his concerns about, which
4 makes sense in his area, with regard to that company.

5 MR. TOWNSEND: Your Honor, I think it's relevant. The
6 government's position is that several high-ranking members of
7 RDC are engaged in a conspiracy to intentionally divert
8 controlled substances. To show that other members are focused
9 more on the financial side of RDC, and are not concerned with
10 diversion.

11 THE COURT: I know. But this witness, from the way
12 I've heard his testimony, that wasn't his job. He had no --
13 not only did he have no concern, that wasn't an area of his
14 employment responsibilities.

15 MR. TOWNSEND: It is a minor point. I can move off
16 it.

17 THE COURT: Let me see what the government, and I'm
18 not sure what difference does it make, to tell you the truth.
19 But so, what are you objecting to and what don't you want to
20 hear?

21 MR. BURNETT: The concerns are two fold. So the
22 narrower concern is, as your Honor expressed, that this is
23 outside the scope of his direct examination, outside the scope
24 of his area of work within the company during the relevant time
25 period.

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1 The broader concern is to the extent that, with
2 witnesses like this, they are going to begin going down routes
3 into saying what the witness said out of court or what Mr. Doud
4 said out of court to the witness about a topic, particularly
5 one that they didn't even testify about on direct, so it
6 couldn't plausibly be impeachment, it is clearly hearsay.

7 THE COURT: We are going back and forth with that too.
8 That's why I need to know where to draw the line. Obviously,
9 you want conversations that you contend are co-conspirator
10 statements. That will be statements, conversations with
11 Mr. Doud, which I am not sure is hearsay at all, because
12 Mr. Doud is -- the question is, what did Mr. Doud do and say
13 with regard to the charges. And two, whether or not it's
14 evidence of Mr. Doud's intent to join a conspiracy, or his
15 participation in a conspiracy.

16 So, I'm not sure where I'm supposed to splice the
17 conversations that you say can be inquired into, to demonstrate
18 whether or not he was or was not engaged in a conspiracy.

19 MR. BURNETT: There are two important points there.
20 The first is right in the text of the rule on hearsay, which is
21 that the government, or the opposing party is allowed to offer
22 the defendant's statements or the statements of the defendant's
23 co-conspirators or the statement of the defendant's agent, but
24 the defendant is not allowed to offer those statements.

25 THE COURT: The rule is the defendant cannot offer

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1 those statements for the truth of the out-of-court statements.

2 So I'm trying to figure out, I mean --

3 MR. BURNETT: To the extent there is an impeachment
4 basis laid for it, it could come in for an impeachment reason.
5 But for a situation here where there was no testimony about it
6 on direct, there is no other reason it would be coming in,
7 other than for the truth of the matter asserted.

8 THE COURT: What is the truthful statement? Give me
9 an example.

10 MR. BURNETT: The example of the exchange we had right
11 there. Mr. Masseth expressed a concern to Mr. Doud about
12 Linden Care for financial reasons. That's going to the truth
13 of Mr. Masseth's concern about Linden Care. That's what they
14 are trying to introduce.

15 THE COURT: I'm not sure why it matters. Who cares
16 whether or not Mr. Masseth's concern is truthful or not.

17 MR. BURNETT: That's a separate reason why this line
18 doesn't make sense. That's the logic of the hearsay problem
19 with it as well.

20 THE COURT: The logic of the hearsay problem that I'm
21 listening for is what conversations are being offered for the
22 truth of the out-of-court statement that's being elicited. And
23 clearly, most of the statements and conversations, particularly
24 with Mr. Doud, are the truth of whatever statements he made at
25 the time is not the issue. For example, directions are not

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1 offered for the truth. They're either evidence of his
2 participation, his knowledge and participation in a conspiracy,
3 or it's not.

4 So, I mean, again with this pharmacy, the reason why I
5 took the time for this is because on this pharmacy, this has
6 been raised before, I'm not sure what -- obviously this is a
7 pharmacy that the defense thinks there is significant evidence
8 to support their position, and you think that it's irrelevant.
9 So I'm trying to figure out if we're going to keep going back
10 and forth with regard to the conversations about this or other
11 pharmacies with Mr. Doud, or among people that you say are
12 acting as co-conspirators, what is it that you don't want the
13 witness to say?

14 MR. BURNETT: Well, here I don't think he should go
15 down the line of this Linden Care discussion that was mentioned
16 for the reasons you just --

17 THE COURT: What are you afraid he is going to say?

18 MR. BURNETT: Not a fear. Just a side show that they
19 are introducing this person's thoughts about one of the
20 pharmacies that he doesn't have any compliance background on to
21 begin with.

22 THE COURT: Okay.

23 MR. BURNETT: For the hearsay point, we'll submit
24 something in writing on this. I think you are right, there are
25 certain statements by Mr. Doud that are properly introduced as

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1 directions or for non-hearsay purposes. But at least based on
2 some of the materials we read, we think there are a
3 considerable number of hearsay statements they plan to offer
4 for the truth of the matter asserted, but it is too much now to
5 be --

6 THE COURT: I don't have enough information at this
7 point. In my view you have two reasons to object. One, you
8 have to have a ground for objection, and two, you've got to
9 have a reason you want to object. I'm trying to figure out the
10 reason you are objecting.

11 MR. BURNETT: For this one, relevance and hearsay
12 objection.

13 THE COURT: That's your grounds. That's not your
14 reason. That's the grounds in which you object. I want to
15 know why you don't want to hear this.

16 MR. BURNETT: The reason it's irrelevant is because
17 Mr. Masseth's perspective on the business concerns he had about
18 Linden Care are not pertinent to the compliance issues that are
19 pertinent in this case.

20 THE COURT: I've already raised that with them, and
21 unless they've convinced me otherwise he has something to do
22 with compliance, I agree with that. But where else am I
23 supposed to control this? What do you anticipate there is
24 going to be further inquiry and what do you want me to limit it
25 to?

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1 MR. BURNETT: Sounds like there won't be a further
2 inquiry on this, but I don't know where he's going on
3 cross-examination otherwise.

4 THE COURT: Mr. Townsend, is there something you need
5 a ruling on that you anticipate they are going to object to
6 before we get rid of this witness?

7 MR. TOWNSEND: I don't believe so, but let me just
8 double check.

9 THE COURT: My position is, unless you have a
10 different argument, my position is with regard to this limited
11 objection, that this witness's opinion about whether he had a
12 concern about compliance or didn't have a concern about
13 compliance is totally irrelevant to this case, because he's not
14 a compliance person. And he naturally, based on this
15 testimony, would say my concern is about sales, not about
16 compliance, and I don't deal with that area, and that's not my
17 job.

18 MR. TOWNSEND: All I would raise, your Honor, is I
19 asked the witness whether he had had conversations with Larry
20 Doud.

21 THE COURT: Right.

22 MR. TOWNSEND: Which is not --

23 THE COURT: What do you expect him to say?

24 MR. TOWNSEND: I expected him to say he had, and he
25 had.

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1 THE COURT: Okay. And what are you implying or what
2 you are you going to elicit are the nature of those
3 conversations or substance of those conversations?

4 MR. TOWNSEND: I asked him specifically on the
5 substance of his personal feelings about Linden Care. I didn't
6 ask what he said to Larry Doud.

7 THE COURT: Why do we care?

8 MR. TOWNSEND: That's why I've already agreed to move
9 on.

10 THE COURT: Is there any other area that's at issue
11 here?

12 MR. TOWNSEND: I wanted to raise that, because the
13 record is reflecting that I attempted to elicit the contents of
14 a conversation, when in fact I simply asked if conversations
15 had happened, and then asked the witness his own personal
16 feeling, which may or may not be irrelevant, which I understand
17 your Honor's ruling on.

18 THE COURT: You can explain to me why his personal
19 feelings are admissible in this case. I'll hear you.

20 MR. TOWNSEND: I've already agreed to move on. I have
21 one more topic to go into and then a couple exhibits to put in
22 through him. And that's it.

23 THE COURT: Anything you anticipate that will be a
24 controversial topic we should address now?

25 MR. BURNETT: Depends what the exhibits will be.

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1 THE COURT: All right.

2 MR. TOWNSEND: The exhibits are a handful of e-mails
3 that Mr. Masseth is on. The topic, I'd like to think it's not
4 controversial.

5 MR. BURNETT: What's the topic?

6 MR. TOWNSEND: RDC's ability to negotiate better
7 prices through buying in bulk.

8 MR. BURNETT: Having --

9 THE COURT: Why don't you indicate to them, we'll take
10 five minutes, indicate to them which exhibits you intend to
11 use, if they have any problems with those exhibits we can
12 address it very quickly. Otherwise, we can just move forward
13 efficiently. And we'll take a five-minute break and we'll
14 either further resolve this or we'll go straight into the
15 witness and try to finish up with this witness.

16 (Recess)

17 THE COURT: Are we ready to continue?

18 MR. BURNETT: Your Honor, I think we anticipate having
19 objections to a number of the exhibits. So, we can either
20 handle them as they come.

21 THE COURT: Let's do it now before I bring the jury
22 in. What's the nature of your objection?

23 MR. BURNETT: Sure. It seems like there are a number
24 of exhibits, some are a little more straightforward than
25 others.

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1 THE COURT: Could you use the microphone? You're
2 talking down.

3 MR. BURNETT: Why don't we start with Defense Exhibit
4 looks like 5.

5 THE COURT: I don't have any of those exhibits. So I
6 don't know what they are.

7 MR. BURNETT: Sorry. 4. Maybe the way to do it is
8 have someone pull it up on the screen.

9 MR. TOWNSEND: We have a binder for you. We're
10 getting it right now.

11 THE COURT: Okay. First tell me in general, tell me
12 in general what these e-mails are.

13 MR. TOWNSEND: The defense is planning on putting in
14 several e-mails, all of which involve the witness, most of
15 which involve Larry Doud, which discuss certain aspects of
16 Mr. Doud's state of mind, which is the central focus of this
17 trial, whether or not he intended to participate in a
18 conspiracy.

19 We are not offering these e-mails for the truth of the
20 matter asserted. We are offering them specifically to show
21 what Mr. Doud was either thinking or what information was being
22 presented to him to impact his thinking.

23 THE COURT: In these e-mails, what is it that reflects
24 what he was thinking about compliance? And what's the
25 substance of that state of mind? I'm not sure what state of

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1 mind that you are saying this reflects.

2 MR. TOWNSEND: The state of mind that it reflects is
3 what Larry Doud is actually thinking about when it comes to
4 these pharmacies. What -- and specifically regarding
5 compliance.

6 THE COURT: Give me an example.

7 MR. TOWNSEND: Okay. So, starting with Defense E5,
8 your Honor.

9 THE COURT: Yes.

10 MR. TOWNSEND: So E5 is a chain which has Larry and
11 Chris. Larry writes the e-mail: Chris, the board discussed
12 the addition of a huge controlled drug purchaser today, Linden
13 Care. They are concerned from their point of view that if we
14 sell them, we may have a service level problem for their
15 stores. I am not sure how it would affect us. I'm thinking it
16 might not have any effect. What do you think?

17 Chris: Larry, Linden Care has a tendency to take all
18 we have in stock on my items. However, once they become more
19 consistent and establish, it should not be a problem.
20 Manufacturers will adjust our usage if we provide them store
21 information, which I have in some cases for Linden Care and ***
22 omit issues I this I would be short term the bigger concern I
23 have is if they decide not to buy from us and we are left with
24 high levels of inventory.

25 THE COURT: So, what state of mind do you say this

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1 reflects?

2 MR. TOWNSEND: They are going back and forth on Linden
3 Care as a customer, and what their feelings are with regard to
4 onboarding.

5 THE COURT: I'm not sure what that proves. What is
6 that supposed to be reflective of?

7 MR. TOWNSEND: How Larry Doud is viewing this
8 potential customer.

9 THE COURT: You guys have to give me more information
10 about Linden Care. Is Linden Care at all one of the pharmacies
11 that is at issue with regard to the illicit distribution of
12 drugs?

13 MR. TOWNSEND: Unquestionably.

14 THE COURT: And you say that this is reflecting his --
15 what state of mind?

16 MR. TOWNSEND: The state of mind regarding what the
17 potential issues are with Linden Care. He is concerned about
18 service level problems for the stores, saying we might be left
19 with high levels of inventory. That's what they're concerned
20 about.

21 THE COURT: Do you have an objection to E5?

22 MR. BURNETT: Yes. So our objection there is that
23 this is not about compliance. The fact that Mr. Doud asked the
24 guy who handles buying product if there is going to be a
25 concern about buying product for Linden Care doesn't go to

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1 whether or not Larry did or didn't have other concerns about
2 compliance.

3 THE COURT: What are you going to offer in terms of
4 evidence with regard to Linden Care?

5 MR. BURNETT: We'll offer other e-mails and testimony
6 from actual compliance people as well as data about Linden Care
7 sales that go to the compliance issues.

8 THE COURT: What's your position as to what the
9 evidence reflects with regard to Linden Care?

10 MR. BURNETT: The evidence will reflect that Linden
11 Care, from early on, beginning around 2013, was a significant
12 compliance concern at RDC. RDC discussed actively those
13 compliance concerns, including with Mr. Doud, and did some
14 compliance work, but then basically dropped the ball and
15 stopped doing compliance on Linden Care entirely,
16 notwithstanding significant red flags.

17 THE COURT: Why isn't discussions about Linden Care in
18 which Mr. Doud is directly involved not relevant to that issue?

19 MR. BURNETT: Two things. First, obviously, as with
20 any customer, a number of possible things you might talk about.

21 THE COURT: Right. And you say it is criminal and
22 they say it is otherwise innocent.

23 MR. BURNETT: Not criminal or innocent. Just the fact
24 you might be talking about a customer's purchasing doesn't say
25 anything about what you think about their compliance issues.

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1 THE COURT: You say the compliance discussions are
2 criminal with regard to Linden Care. The concerns were
3 advancing a criminal conspiracy. They say that there are other
4 issues and not advancing a criminal conspiracy. But there were
5 other issues and concerns about Linden Care which were driving
6 and where the primary motive for them to have concerns or not
7 to have concerns about Linden Care.

8 I'm not sure how I'm supposed to only allow e-mails
9 that you want to put in that you say reflect a criminal
10 conspiracy involving Linden Care, but not allow e-mails which
11 they say are about Linden Care, which they contend reflect that
12 those are innocent conversations about Linden Care.

13 MR. BURNETT: Your Honor, I think it is because they
14 are about totally different subjects. If Linden Care, if --

15 THE COURT: The subject is Linden Care. The subject
16 is whether or not the object of the conspiracy was to profit
17 off of illicit drugs, and that's the way they were handling
18 Linden Care. They say no, there are other concerns about
19 Linden Care that they expressed, and it doesn't give the jury
20 an accurate picture or complete picture of the concerns or
21 non-concerns about Linden Care, if you only let in what the
22 government contends is lack of compliance with regard to Linden
23 Care. If they believe that they have other conversations with
24 regard to Linden Care, the subject of Linden Care, which
25 reflect a different concern.

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1 MR. BURNETT: I think if it was one thing about
2 e-mails about compliance or not compliance of Linden Care. An
3 e-mail about something that's not compliance period of Linden
4 Care. Whether or not there are other concerns or not concerns
5 about Linden Care doesn't go to whether or not there are or not
6 compliance concerns.

7 MR. TOWNSEND: May I be heard on that?

8 THE COURT: Yes.

9 MR. TOWNSEND: The government's position seems to be
10 that unless the e-mail specifically uses the word "compliance"
11 in it, that it is inadmissible. Compliance is a massive part
12 of what RDC does, and it affects a number of different
13 functions of the company. Purchasing is intertwined with
14 compliance. The amount of products bought, the amount of
15 products sold, that is a core function of what compliance looks
16 at. The idea that it's not about compliance but that it is
17 about purchasing is absurd.

18 MR. JANEY: The government's expert is going to sit in
19 the witness box and is going to attempt to attest that during
20 the relevant time frame that Linden Care in particular drove
21 the sales of RDC out the wazoo, and that Larry Doud was
22 intimately involved in that criminal relationship. That expert
23 and others are going to testify that the Linden Care sales
24 activity, your Honor, were in fact criminal. Not just how
25 Larry Doud and others thought about the compliance as applied

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1 to Linden Care. The government's argument on this is obtuse.
2 Everything relating to Linden Care, based on what the
3 government's expert is going to say and other witnesses, is a
4 part of the criminal conspiracy that they allege Larry Doud
5 joined and participated in.

6 MR. BURNETT: That's just not true.

7 THE COURT: Other than your general objection to these
8 conversations about Linden Care, what else, what other exhibits
9 do you object to and on what other basis do you object?

10 MR. BURNETT: I think there are a couple of
11 categories. First are Exhibits 4, 7, and 8.

12 THE COURT: I don't think I have those. Oh I see.
13 What's your objection to 4.

14 MR. BURNETT: Those couldn't plausibly go to
15 Mr. Doud's state of mind because Mr. Doud isn't on them.

16 THE COURT: I'm not sure what this e-mail is about.
17 What's this e-mail about that's relevant to this case?

18 MR. TOWNSEND: This e-mail is between the witness and
19 a representative from a company called Insys, which is a
20 manufacturer and a supplier of Subsys, which is fentanyl, which
21 RDC purchased, which is one of the drugs at issue in this
22 indictment. And it concerns Linden Care. So this e-mail --

23 THE COURT: How does this concern Linden Care?

24 MR. TOWNSEND: Because in the second e-mail in the
25 chain, from Dion Reimer to Chris Masseth, he says your favorite

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1 guy called me. That's a reference to a rep from Linden Care.

2 THE COURT: Okay. So what is this conversation
3 supposed to reflect?

4 MR. TOWNSEND: This conversation --

5 THE COURT: It obviously doesn't reflect the argument
6 you made the state of mind of Mr. Doud.

7 MR. TOWNSEND: This conversation reflects the -- it
8 actually does go to compliance, your Honor. Because it
9 reflects that the buying power of Linden Care was already
10 increased considerably over the last month, they're
11 investigating the store, which the store knows about and they
12 don't feel comfortable raising the amount they can buy again.
13 Those are all compliance related issues.

14 MR. BURNETT: It is the definition of hearsay. They
15 are introducing evidence, an out-of-court statement for the
16 truth of the matter asserted.

17 THE COURT: You said which other exhibits?

18 MR. BURNETT: 4, 7, and 8 I think fall into this
19 category.

20 THE COURT: I don't have -- oh. 4, 7 and what?

21 MR. BURNETT: 8.

22 THE COURT: What is 7 and 8?

23 MR. TOWNSEND: 7 is an e-mail between the same two
24 people, the sales rep for Insys and the witness, which is
25 discussing the increase in fentanyl sales, and basically an

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1 expected growth based on market demand system.

2 THE COURT: Where is that in 7?

3 MR. TOWNSEND: In 7 if you look four lines down. It
4 says: I suggest you are experiencing a shift in business to us
5 coupled with an expected growth in market demand for the Subsys
6 product.

7 THE COURT: What is in 8? What's the substance of 8?

8 MR. TOWNSEND: 8 is between the actual supervising
9 pharmacist and the chief operations officer of Linden Care and
10 the witness. And what the witness is doing here is explaining
11 how the different holds get put on their account, why their
12 purchasing gets put on hold, and what that means for Linden
13 Care.

14 THE COURT: What's the relevance of this?

15 MR. TOWNSEND: It's a compliance function.

16 THE COURT: What's a compliance function?

17 MR. TOWNSEND: Holding the orders.

18 THE COURT: Where does it say that?

19 MR. TOWNSEND: So, if you look down at the bottom,
20 where the e-mail from Jordan Fogel at the very bottom of the
21 page: Chris, can you tell me our allocation on Nucynta and
22 Lazanda? Thanks again, Jordan. That's the supervising
23 pharmacist.

24 And Chris Masseth responds: Jordan, allocation is
25 really not the correct term. What cuts your orders is our

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1 filtering system, which is in place to prevent errors.

2 This is a compliance function to weed out problematic
3 ordering, whether it is by clerical error or whether they hit a
4 specific limit that they are capped at.

5 The filtering works -- in the middle of that first
6 paragraph -- the filtering works by looking at your last three
7 months average per SKU and adds a percentage to allow for
8 normal growth. If an order goes above this amount, it cuts
9 that order down to that amount and allows six per day.

10 Linden Care -- the next paragraph -- hits this
11 filtering because for these items you are well beyond normal
12 growth.

13 THE COURT: All right. Look, this is my position.
14 With regard to the e-mails with Mr. Doud, I'll admit the
15 e-mails, the conversations with Mr. Doud that have to do with
16 Linden Care, because I anticipate that there are going to be
17 other e-mails that the government is going to want to admit
18 into evidence with regard to Linden Care.

19 Am I correct about that?

20 MR. BURNETT: Yes, your Honor.

21 THE COURT: With regard to these e-mails between
22 Mr. Masseth and someone else, I see no relevance with regard to
23 those conversations and state of mind of Mr. Doud.

24 Now, if you want to ask this witness some basic
25 questions about whether or not he was involved with Linden Care

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1 and what they did with Linden Care, you can ask him those
2 questions. And if it turns out that the e-mails turn out to be
3 relevant, that's one thing. But those e-mails that he has with
4 other people that have absolutely, as you would agree, have
5 absolutely nothing to do with any criminal conspiracy, then
6 there is very little, if any, relevance about what Mr. Masseth,
7 the innocent conversations that Mr. Masseth is having outside
8 of the presence of Mr. Doud with regard to an area that he's
9 concerned about.

10 The question, as you appropriately put it, is what is
11 the state of mind of Mr. Doud. Did Mr. Doud join a conspiracy.
12 And e-mails between people and Mr. Doud is not copied on can't
13 reflect one way or the other on whether or not he's involved in
14 a conspiracy. And e-mails between people who are not claiming
15 to be co-conspirators have absolutely no bearing on whether
16 there was a conspiracy that others were involved in, and that
17 Mr. Doud joined that conspiracy.

18 So, I'll allow those e-mails that Mr. Doud is copied
19 on. You can get whatever testimony you want from either this
20 witness or Mr. Doud or another witness as to his innocent
21 behavior, and the government can put in their e-mails and they
22 can put in their testimony about what e-mails and conversations
23 he had with Mr. Doud that reflect that he was a knowing
24 participant.

25 MR. BURNETT: If I may, I want to make sure I'm

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1 preserving the objective to these other e-mails. It's not
2 purely a relevance concern we have here. The law is clear that
3 a defendant can't be offering his own self-serving statements
4 about his state of mind through out-of-court materials. If he
5 wants --

6 THE COURT: I agree with that and I would accept that
7 argument if you weren't representing to me that you were going
8 to offer e-mails. You do intend to offer e-mails that reflect
9 what Mr. Doud was involved in, with regard to these
10 conversations.

11 MR. BURNETT: Different parties are allowed to -- the
12 hearsay rule --

13 THE COURT: I know. But once you've offered the
14 conversations about this company, and you say that you want to
15 offer e-mails that reflect that he's having criminal
16 conversations, he has the right to say, no, I have other
17 conversations about this and this is not criminal, this
18 reflects my business judgment, and I can show you that the
19 completeness of the conversations about this particular
20 company, by showing you I have e-mails that don't reflect any
21 attitude or mental state that the government wants you to imply
22 with regard to this company.

23 MR. BURNETT: I would like to preserve it. We'll put
24 in a letter on this, this evening.

25 MS. ROTHMAN: Your Honor, respectfully, I don't think

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1 that's entirely correct. And we can brief this.

2 THE COURT: What's not entirely correct?

3 MS. ROTHMAN: The idea that the defendant can offer
4 e-mails into evidence that suggest he's innocent through his
5 own self-serving statements.

6 THE COURT: No. But he can respond to your e-mails.
7 I'm not going to waste our time. If you are going to put in
8 e-mails where the defendant you say are criminal conversations
9 about this company, and about doing business with this company,
10 no, you can't argue that, in response, they can't offer the
11 complete conversations that he had about this.

12 MS. ROTHMAN: Sure.

13 THE COURT: If your argument is, well, they have to
14 wait until after we put in our e-mails, I guess that's
15 technically an argument, but that's a total waste of time if we
16 know your e-mails are going to come in.

17 MS. ROTHMAN: Here's what I might respectfully
18 propose. It sounds like the Court has found that e-mails that
19 Mr. Doud is not on cannot come in through this witness. There
20 are a couple of other e-mails that Mr. Doud is on. We would
21 request the opportunity to brief this question for the Court.
22 And if the Court finds they should be admitted, we can admit
23 them after this witness's testimony. It sounds like this
24 witness has very little, in fact, nothing to say --

25 THE COURT: This witness is a person who's on the

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1 e-mails. I'm not going to bring this witness back a second
2 time.

3 MS. ROTHMAN: My concern is these are statements of
4 Mr. Doud that should not be coming into evidence. This is not
5 one conversation for completion. We can brief it, your Honor,
6 and we will. Because this is going to come up in some other
7 e-mails I believe the defense may try to offer through Bill
8 Pietruszewski or even --

9 THE COURT: I can tell you my position is going to be
10 consistent on this. If you intend to offer e-mails with regard
11 to certain companies, then you say those e-mails reflect a
12 criminal conspiracy that Mr. Doud was involved in to overlook
13 their non-compliance, then they have the right with regard to
14 those same companies to offer e-mail conversations that
15 Mr. Doud was involved in, which they can argue lead to a
16 different conclusion about all of his conversations and his
17 activities and his intent.

18 So, I don't know if there is anything you are going to
19 convince me of that's going to convince me you can put in every
20 e-mail that you want about a particular company, about how he's
21 in a criminal conspiracy with regard to his activities in that
22 company, and they have a stack of e-mails that they say don't,
23 that reflect just basic business judgment, and it is the wrong
24 interpretation, and they can't offer those e-mails.

25 I understand your argument with regard to self-serving

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1 hearsay of other individuals who have nothing to do with
2 Mr. Doud. But, I don't know what argument you're going to make
3 that, after you offer e-mails of Mr. Doud discussing this
4 company, that you have the right to keep out other e-mails
5 where Mr. Doud is discussing this company.

6 MS. ROTHMAN: We'll brief it, your Honor.

7 THE COURT: Well, okay. You can brief it and we can
8 deal with it with other issues.

9 But, as to these e-mails, my position is, they can ask
10 this witness about these e-mails, and they can admit these
11 e-mails in evidence in this case. If there are other e-mails
12 that are similar in the future and you want to brief it, try to
13 convince me that I should only let in your e-mails on those
14 subject matters or not and not their e-mails on that subject
15 matter, I'll listen to it. But we are not to bring this
16 witness back just to do that.

17 All right. So let's get the jury in and let's finish
18 up with this witness.

19 (Continued on next page)

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Masseth - Cross

1 (Jury present)

2 THE COURT: I apologize for the delay. Let me remind
3 you, if we're in here working, it ultimately saves us time in
4 the long run rather than adding to the trial to resolve these
5 issues.

6 So let's continue. Bring the witness back. And let's
7 continue.

8 BY MR. TOWNSEND:

9 Q. Welcome back, Mr. Masseth.

10 A. Thanks.

11 Q. I want to discuss RDC's purchasing power. That's what you
12 were involved in, right? Purchasing for RDC?

13 A. Correct.

14 Q. So, based on your role, you know that RDC could negotiate
15 better prices from manufacturers when they bought in larger
16 volumes?

17 A. In general, yes.

18 Q. So from a practical standpoint, it could make sense to keep
19 a customer, even one that wasn't necessarily profitable, if
20 they increased RDC's purchasing volume from a manufacturer.

21 A. I guess that would be fair to say, yes.

22 Q. Because it allowed for RDC to negotiate better prices
23 overall, right?

24 A. Potentially, yes.

25 Q. And that could apply to controlled substances and

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Masseth - Cross

1 non-controlled substances?

2 A. Yes.

3 Q. The more lip balm you are buying, the better price you are
4 going to get on it?

5 A. In general, yes.

6 Q. So, isn't it true that that's why Linden Care was an
7 essential customer for RDC?

8 A. There's differences of opinion on that.

9 Q. To you, the volume that Linden Care purchased allowed RDC
10 to get better prices?

11 MR. BURNETT: Objection.

12 THE COURT: Overruled. You can answer.

13 A. In some cases, yes.

14 Q. And better prices for manufacturers meant more profits for
15 RDC as a company?

16 A. In general, yes.

17 Q. If you buy a bottle for 95 cents and sell it for a dollar,
18 you make 5 cents, right?

19 A. Yes.

20 Q. But if you buy 100 bottles at 90 cents and sell them for a
21 dollar, now you're making 5 more cents per bottle, right?

22 A. In that example, yes.

23 MR. TOWNSEND: With your permission, I'd like to show
24 the witness and the government what's been marked for
25 identification as Defense Exhibit E3.

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Masseth - Cross

1 THE COURT: Yes.

2 Q. Mr. Masseth, do you recognize your name on the top of this?

3 A. Yes, I do.

4 Q. It is an e-mail chain involving you from January 21, 2013,
5 right?

6 A. Correct.

7 MR. TOWNSEND: At this time I offer Defense E3 in
8 evidence.

9 THE COURT: Any objection?

10 MR. BURNETT: The same as earlier, your Honor.

11 THE COURT: I want to make sure the record is clear.
12 You do have an objection to E3?

13 MR. BURNETT: Yes, objection.

14 THE COURT: I'm going to reserve decision and I want
15 you to lay a further foundation with regard to this exhibit
16 before I decide whether to admit it.

17 Q. These e-mails are about Linden Care, right? That's the
18 subject line?

19 A. Yes, it is.

20 Q. And they discuss monitoring Linden Care, right?

21 A. Yes.

22 MR. TOWNSEND: Your Honor, I would offer E3.

23 THE COURT: I'll admit that into evidence.

24 (Defendant's Exhibit E3 received in evidence)

25 Q. This chain specifically includes Larry Doud?

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Massetth - Cross

1 A. Yes, it does.

2 MR. TOWNSEND: Your Honor, was this admitted?

3 THE COURT: Yes.

4 MR. TOWNSEND: Can we please publish to the jury.

5 THE COURT: Yes.

6 Q. It looks like it's up. If we could highlight that second
7 e-mail, one that starts from Larry Doud to the end there, and
8 maybe make it a little bigger for the jury.

9 This is an e-mail sent by Larry Doud to, among other
10 people, you, right?

11 A. Yes, I was copied on it.

12 Q. And Lanny Doud and Chris Noulis and Richie Cullen, and Joe
13 Brennan?

14 A. Correct.

15 Q. And Larry writes: Chris, as you have from the beginning
16 with Linden Care, please stay on top of these developments. I
17 believe this is a difficult account, and that we really want
18 this business, as long as we do not get burned in the process.
19 If things should seem strange or out of place, we need
20 immediate notice for the good of RDC. Larry.

21 That's what it says, right?

22 A. Yes.

23 MR. TOWNSEND: Can we go up to the top e-mail.

24 Q. We're going to zoom in on the top e-mail which is a
25 response from Chris Noulis, right?

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Massetth - Cross

1 A. Yes, Chris Noulis.

2 Q. At the end of the e-mail, Noulis says: I'll be keeping my
3 ears and eyes open.

4 Right?

5 A. That's what it says, yes.

6 Q. And what was Chris Noulis' role?

7 A. He was a salesman.

8 Q. He oversaw the Linden Care account, right?

9 A. I believe so, yes.

10 MR. TOWNSEND: You can take down E3.

11 Q. You're familiar with a company called Insys?

12 A. Yes, I am.

13 Q. Insys made a product called Subsys?

14 A. Yes.

15 Q. Subsys was a fentanyl spray?

16 A. Yes, it was.

17 Q. That was a product that Linden Care would buy?

18 A. Yes, they did purchase it.

19 Q. Isn't it true that in January of 2013, Linden Care tried to
20 increase their purchasing amount of Subsys? Do you remember
21 that?

22 A. I don't recall.

23 Q. If I were to show you an e-mail that you wrote on the
24 topic, would that refresh your recollection?

25 A. Yes.

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Masseth - Cross

1 MR. TOWNSEND: I request permission to just show the
2 witness and the government Defense E4.

3 THE COURT: Yes.

4 Q. Do you see that there?

5 A. Yes.

6 Q. It is an e-mail from you to Dion Reimer?

7 A. Correct.

8 Q. I want you to read it to yourself and let me know if it
9 refreshes your recollection about whether or not Linden Care
10 was attempting to increase their purchasing.

11 A. Yes.

12 Q. At the time RDC was conducting an investigation of Linden
13 Care?

14 A. I don't know.

15 Q. Well, if I were to show you that e-mail again, would that
16 possibly refresh your recollection?

17 A. It does say that, yes.

18 Q. I don't want you to read it. I want you to testify.

19 THE COURT: He didn't say he didn't remember. He said
20 he didn't know. So, I'm not sure what you were refreshing his
21 recollection about, if he says he doesn't know.

22 MR. TOWNSEND: Okay.

23 Q. Is it that you don't remember or that you are unfamiliar?

24 MR. BURNETT: Objection.

25 THE COURT: Overruled, you can answer.

Mlj3dou2

Masseth - Cross

1 A. As it pertains to what?

2 Q. As it pertains to whether RDC was conducting an
3 investigation of Linden Care in January 2013.

4 A. I don't recall that we were.

5 Q. Okay. So, looking at Defense E4, does that refresh your
6 recollection as to whether RDC was investigating Linden Care?

7 A. It appears that we were. Yes.

8 Q. And the request by Linden Care to increase their purchasing
9 ability was denied by RDC at that time, right?

10 A. It appears it was.

11 (Continued on next page)

M1JBDOU3

Masseth - Cross

MR. BURNETT: Objection.

THE COURT: I'm going to sustain the objection. He doesn't say any of this document refreshes his recollection. He's testifying from a document that he says that he doesn't remember anything about. He says, that's what the document says. The document is not in evidence. He's not reviewed this document.

So the question is, Does he remember this. And by looking at this, Does it make him remember something that you want him to remember, and he says it does not. He didn't say that he has any independent memory

MR. TOWNSEND: Your Honor, with your permission, I would like to show the witness and the government Defense E5.

THE COURT: Yes.

BY MR. TOWNSEND:

Q. Mr. Masseth, do you recognize this?

A. Yes.

Q. It's an email from you to Larry Doud in February of 2013, right?

A. That's correct.

Q. It's regarding Linden Care?

A. Yes.

MR. TOWNSEND: Your Honor, at this time I offer Defense E5 in evidence.

THE COURT: It will be admitted into evidence

M1JBDOU3

Masseth - Cross

consistent with your previous discussion.

(Defendant's Exhibit E5 received in evidence)

MR. TOWNSEND: If we could publish to the jury.

THE COURT: Yes.

MR. TOWNSEND: If we could zoom in on the bottom portion.

Q. This is an email from Larry Doud to you, right?

A. Yes, it is.

Q. It writes: Chris, the board discussed the addition of a huge control drug purchaser today, Linden Care. Their concern, from their point of view, that if we sell them, we may have a service level problem for their stores. I'm not sure how it would effect us. I'm thinking it might not have any effect. What do you think? Manufacturers like Purdue, Mallinckrodt or say Watson. Larry. Do you see at the top where you responded?

A. Yes.

Q. And you responded: Larry, Linden Care has the tendency to take all we have in stock on my items. However, once they become more consistent and stable, it should not be a problem. Manufacturers will adjust our usage if we provide them the store information which I have in some cases for Linden Care. Any omit issues, I think, will be short-term. The bigger concern I have is if they decide not to buy from us and we are left with high levels of inventory. Chris.

That was your response, right?

M1JBDOU3

Masseth - Cross

1 A. Yes, it was.

2 MR. TOWNSEND: We can take down E5. Request
3 permission to show the government and the witness defense
4 Exhibit E6.

5 THE COURT: Yes.

6 Q. Do you see that, Mr. Masseth?

7 A. Yes.

8 Q. That is an email chain involving Larry Doud, you, Bill
9 Pietruszewski, Joe Brennan, Lanny Doud, Ed Kirker and Kim
10 Perry, right?

11 A. Yes.

12 Q. In July 2013?

13 A. Yep.

14 MR. TOWNSEND: Your Honor, I offer this as Defense E6.

15 THE COURT: It will be admitted into evidence.

16 (Defendant's Exhibit E6 received in evidence)

17 MR. TOWNSEND: Can we publish to the jury?

18 THE COURT: Yes.

19 MR. TOWNSEND: We can go to page two.

20 Q. You see the email at the bottom of the page from Inder
21 Tallur?

22 A. Yes.

23 Q. And that's to Larry Dowd, Joe Brennan, Kim Perry, Lanny
24 Doud, you, Ed Kirker and Bill Pietruszewski, right?

25 A. Correct.

M1JBDOU3

Masseth - Cross

1 Q. And Inder Tallur was at Linden Care, right?

2 A. Inder Tallur is part of Bell Health.

3 Q. And Bell Health is the company that owned Linden Care?

4 A. Correct. Well, they're an investment firm.

5 Q. Which had a controlling stake in Linden Care?

6 A. Yes.

7 Q. Inder Tallur writes: Larry and Team, thanks so much for
8 hosting us today at RDC. And Larry, thanks again for the ride
9 two and fro. You all seem like a close net team and we're
10 excited about the opportunity of working closely with you and
11 growing together. The following are some follow-ups from our
12 meeting.

13 We'll provide a summary about all town total buying
14 group purchases, including generic mix. Mark Weiner will
15 provide non-RDC generic buying at Linden and see if we can move
16 some of the generic purchases to RDC. However, please bear in
17 mind that the drugs in this category are oxycodone,
18 hydromorphone, etc., so that will increase your exposure in
19 controlled substances. Mark will provide the details.

20 If we can go to the next page at the very top, that
21 top bullet point.

22 Then he writes: Carlos Aquino, it would be very
23 helpful to have Carlos involved in our compliance initiative.
24 We want to have a stellar compliance program in place. And as
25 discussed, we are planning on hiring McDermott Will & Emery, a

Masseth - Cross

Q. Does that refresh your recollection?

M1JBDOU3

Masseth - Cross

1 A. Of orders being cut?

2 Q. Yes.

3 A. Yes.

4 Q. So when you say an order was cut, can you explain what that
5 means?

6 A. So a customer, as an example, might order 100 pieces, but
7 we only ship 50.

8 Q. And why would that happen?

9 A. Multitude of reasons.

10 Q. Some compliance related?

11 A. Potentially, yes.

12 Q. Some non-compliance related?

13 A. Yes.

14 Q. Do you recall in this particular instance with Linden Care
15 whether it was compliance or non-compliance related?

16 A. This was not compliance related.

17 MR. TOWNSEND: Your Honor, with your permission, I'd
18 like to show the government and the witness Defense E9.

19 THE COURT: Yes.

20 Q. Can you see that, Mr. Masseth?

21 A. Yes.

22 Q. This is an email from Larry Doud to you, Richie Cullen, Joe
23 Brennan and Lanny Doud in June of 2015; is that right?

24 A. Yes.

25 Q. And this is regarding a pharmacy called Dunn Meadow, right?

M1JBDOU3

Masseth - Cross

If you look down towards the bottom.

A. Yes, it is.

MR. TOWNSEND: Your Honor, I offer E9 in evidence.

THE COURT: Would you give me a further offer, identify what this is.

Q. Are you familiar with Dunn Meadow?

A. Yes, I am.

Q. Dunn Meadow was a pain management clinic similar to Linden Care, right?

A. I just know them as a pharmacy, but, yes.

Q. Are you aware that they purchased a high volume of controlled substances?

A. Yes.

Q. And a high volume of non-controlled substances?

A. I'm not sure about the non-control.

Q. But they were a high prescriber of oxy and fentanyl?

A. What do you mean by prescriber?

Q. I'm sorry. They filled prescription for oxy and fentanyl?

A. They purchased it from us, so I can only assume they filled it.

Q. But they were a large purchaser?

A. Yes.

MR. TOWNSEND: Your Honor, with that, I offer E9.

THE COURT: It will be admitted into evidence.

(Defendant's Exhibit E9 received in evidence)

M1JBDOU3

Masseth - Cross

1 MR. TOWNSEND: May I publish to the jury?

2 THE COURT: Yes.

3 Q. If we could zoom in on that bottom email from Dion Reimer.

4 Dion Reimer was a representative from Insys, right?

5 A. That's correct.

6 Q. And Insys was the company that made Subsys?

7 A. Yes.

8 Q. And Dion is asking you if you know anything about Dunn

9 Meadow pharmacy, right?

10 A. He was asking if Bill Pietruszewski knew anything about
11 them.

12 Q. But he sent the email to you?

13 A. Correct.

14 Q. You can bring that down. And then you reached out to other
15 members of RDC regarding Dunn Meadow?

16 A. Yes.

17 Q. You forwarded them Dion's email?

18 A. Yes.

19 Q. And Larry Doud responded at the top. And Larry said, I
20 believe we are sending Juice in to work with them; is that
21 right?

22 A. Yes.

23 Q. And Juice is a nickname for Julius Morton, right?

24 A. Yes.

25 Q. And you previously referred to him as a compliance field

M1JBDOU3

Masseth - Cross

auditor?

A. Yes.

Q. And it was his job to go in and evaluate either current customer or potential customers for compliance related issues, right?

A. Yes.

MR. TOWNSEND: Your Honor, with your permission, I'd like to show the witness and the government Defense E10.

THE COURT: Yes.

Q. You recognize this?

A. Yes.

Q. This is an email from Larry Doud to you and Joe Brennan on July 1st, 2015, right?

A. Correct.

Q. If you could just go to page two. The beginning of this chain is an email from Mark Weiner to you, right?

A. Yes.

Q. And Mark Weiner was the CEO of Linden Care?

A. Yes, he was.

MR. TOWNSEND: Your Honor, I offer E10.

THE COURT: It will be admitted into evidence.

(Defendant's Exhibit E10 received in evidence)

MR. TOWNSEND: Publish to the jury?

THE COURT: Yes.

Q. Mark Weiner writes to you: Chris, can you please discuss

M1JBDOU3

Masseth - Cross

1 this issue with Joe and Larry. The Horizon product increased
2 in price at 12:01 a.m. on July 1, 2015. Our order was picked
3 and invoiced at 18:38 on June 30th. It seems that RDC raised
4 the price a bit early. Can you please discuss this with Larry,
5 Joe and Horizon if necessary.

6 So again, Mark Weiner was the CEO of Linden Care,
7 right?

8 A. Yes.

9 Q. And he was one of the people who would make purchases from
10 RDC?

11 A. Yes.

12 Q. And issues with purchases and pricing would sometime get
13 routed to you?

14 A. Correct.

15 Q. Let's go back to page one. At the bottom email there you
16 responded, right?

17 A. Yes.

18 Q. So you indicated, that pricing is based on invoice date,
19 which was July 1st. Also the letter states that all orders
20 after 2:00 p.m. CST, on June 30th, will be at the new price or
21 canceled. Your order came in at 6:08 p.m. I copied Joe and
22 Larry. I will talk with Horizon also.

23 That was your response, right?

24 A. Yes.

25 Q. So essentially you were saying that the price was right?

M1JBDOU3

Masseth - Cross

1 A. Yes.

2 Q. And then Larry Doud responds to you -- he responds to you
3 and Joe Brennan and says, my vote is to give him the price. He
4 has a point, right?

5 A. Yes.

6 Q. And you respond to Larry by explaining in the middle of
7 that document, in the middle of that email. We do not have an
8 agreement with Horizon and only make up our losses selling to
9 Linden when they have price increases.

10 We did them a favor on the Subsys order today charging
11 them an old price, even though the price change happened
12 yesterday. On that order alone, they are saying \$641,532. The
13 difference on the horizon items would be \$78, 834. Let me know
14 if you want me to give them the credit.

15 And Larry responded to that, right? And Larry wrote
16 back to you, Chris, I only said what I would do. If you can
17 handle it another way, I'm good with it. It did sound like we
18 entered it ahead of schedule from what he said. That was
19 Larry's response, right?

20 A. Correct.

21 MR. TOWNSEND: With the Court's permission, I would
22 like to show the witness Defense E11.

23 THE COURT: Yes.

24 Q. You see that, Mr. Masseth?

25 A. Yes.

M1JBDOU3

Masseth - Cross

1 Q. And that's an email chain between you and Larry Doud?

2 A. Yes.

3 Q. And the email chain discusses Linden Care?

4 A. Yes, it does.

5 MR. TOWNSEND: Your Honor, I offer E11.

6 THE COURT: It will be entered into evidence.

7 (Defendant's Exhibit E11 received in evidence)

8 MR. TOWNSEND: May I publish?

9 THE COURT: Yes.

10 Q. We can go to page two. Mr. Masseth, the beginning of this
11 chain starts with Chris Noulis sending a link to an article.
12 You see that?

13 A. Yes.

14 Q. And the article concerned arrests made at the company
15 Insys; is that right?

16 A. I can assume that by what the link says.

17 Q. You can go back to page one. Insys, again, is the company
18 that makes Subsys?

19 A. Correct.

20 Q. In response to that email, Larry Doud sent you an email and
21 the title was, Forward, CBS news today on Subsys exec arrest,
22 right?

23 A. Correct.

24 Q. And he said, Chris, how much of this are we selling, how
25 many accounts and who are they. Would it be worth dropping the

M1JBDOU3

Masseth - Redirect

1 line? And then you responded, right? You responded?

2 A. Yes.

3 Q. And you wrote: Larry, this is why the DEA is investigating
4 us and Linden Care. Linden Care, Dunn Meadow and Windsor are
5 the current big customers of Subsys. We are closely monitoring
6 their purchases through Bill P, Jessica and compliance. I do
7 not know how the compliance manages their use, but I believe we
8 should consider strongest restrictions on sales for Subsys.
9 That was your response?

10 A. Correct.

11 MR. TOWNSEND: Your Honor, if I could have one moment?

12 THE COURT: Yes.

13 MR. TOWNSEND: Nothing further, your Honor.

14 THE COURT: Any further questions for this witness?

15 MR. BURNETT: Yes, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BURNETT:

18 Q. Mr. Masseth, do you recall that you were asked a question
19 about a document that referred to Dunn Meadow?

20 A. Yes.

21 Q. You mentioned that's one of the pharmacies RDC sold to,
22 correct?

23 A. Correct.

24 Q. Are you aware about any of the details of RDC's compliance
25 reviews of Dunn Meadow?

M1JBDOU3

Masseth - Redirect

1 A. Not in particular, no.

2 Q. Now, there was another email that you were on that was
3 called Horizon. Do you remember that one, that was the title?

4 A. Yes.

5 Q. What was Horizon?

6 A. Horizon was a branded manufacturer.

7 Q. What kind of drugs did it make?

8 A. They had just a couple of products non-controls, Pennsaid,
9 Rayos, and I can't remember the other one, but it was only like
10 three different items.

11 Q. Were any of those products that they sold opioids?

12 A. They were not, non-controls.

13 Q. And your email about Horizon, the one that you were showed,
14 did that have anything to do with compliance issues at Linden
15 Care?

16 A. No.

17 Q. Let's pull up now Defense Exhibit 5.

18 MR. TOWNSEND: For the record, that's E5.

19 MR. BURNETT: Defense Exhibit E5.

20 Q. Do you recognize this as a document that you looked at a
21 few minutes ago?

22 A. Yes.

23 Q. What, if anything, did this conversation between you and
24 the defendant have to do about compliance at Linden Care?

25 A. Probably nothing on compliance.

M1JBDOU3

Masseth - Redirect

1 Q. What, if any, role did you have with respect to compliance
2 at Linden Care?

3 A. Very little.

4 Q. Do you see -- I want to focus on the first sentence of your
5 response to Mr. Doud. Do you see that you wrote, Linden Care
6 has a tendency to take all we have in stock on my items?

7 A. Correct.

8 Q. What were you referring to there?

9 A. It was all the branded RX items. I said, all the stock we
10 have, meaning individual items. We could have say 200 items on
11 hand or 200 individual bottles, and Linden Care would place an
12 order for 300. So we would ship them all 200 and then have no
13 net of 100 pieces and no inventory to sell to any other
14 customers. So they would take all of our inventory on
15 individual items.

16 Q. What did that have to do with compliance? Was that just an
17 inventory issue?

18 A. Just an inventory issue.

19 Q. That email was from February 2013, correct?

20 A. Correct.

21 Q. Let's turn now ahead to Defense Exhibit E11. This is
22 another exhibit that you looked at a few minutes ago, correct?

23 A. Correct.

24 Q. This one's from about a little over three years later,
25 right, in December of 2016?

M1JBDOU3

Massetth - Redirect

1 A. Yes.

2 Q. Do you recall that you read out Mr. Doud's questions to you
3 that he sent in these emails?

4 A. Yes.

5 Q. What was your reaction when Mr. Doud sent you these
6 questions? What did you think?

7 A. I was surprised.

8 Q. Why were you surprised?

9 A. Cause in my belief, he knew about Linden Care, Dunn Meadow
10 and Windsor.

11 Q. Why did you believe that?

12 A. They're very big customers. We talked about them on a
13 regular basis, so we knew they were purchasing a lot.

14 Q. When you say we talked about them, did that include
15 conversations with Mr. Doud?

16 A. Yes.

17 Q. I want to talk about an email that was sent between 2013
18 and 2016 when this email comes in.

19 We can take this down. Ms. Hauck, if you could please
20 pull up Government Exhibit 108G which is already in evidence.

21 MR. BURNETT: Your Honor, may I have permission to
22 publish this to the jury?

23 THE COURT: Yes.

24 Q. When is this email from, Mr. Masseth?

25 A. May 2014.

M1JBDOU3

Masseth - Redirect

1 Q. Who wrote it?

2 A. Bill Pietruszewski.

3 Q. Who is it to?

4 A. To Ed Kirker and myself.

5 Q. And what's the subject line there?

6 A. Linden Care/Bell Health.

7 Q. And is Linden Care one of the pharmacies that you looked at
8 some documents about a few minutes ago?

9 A. Yes.

10 Q. And I think you mentioned Bell Health is the parent company
11 for that pharmacy, correct?

12 A. Yes.

13 Q. Could you please read what Mr. Pietruszewski wrote to you
14 in that email in 2014?

15 A. Yep. I thought I would share with both of you, you both,
16 that Larry Doud and I had a meeting with Inder from Bell Health
17 in regards to Linden Care. Larry wants Linden Care to receive
18 what they want, he, I, being very aggressive, and not to cut
19 anything from their orders.

20 Larry wants our venture to work with Linden Care/Bell
21 Health, and if anyone disagrees, will need to answer to him.
22 So moving forward, I will not cut from their orders. And if
23 you do not agree with me, Larry said to ask him for yourself.
24 Larry threatened me to be on board with this or I may not like
25 the outcome. I thought you both would like to know this.

M1JBDOU3

Masseth - Recross

1 Kind regards.

2 MR. BURNETT: No further questions, your Honor.

3 THE COURT: Further questions of this witness?

4 RECROSS EXAMINATION

5 MR. TOWNSEND: If we could just bring up that same
6 exhibit.

7 BY MR. TOWNSEND:

8 Q. You just read this email, right, Mr. Masseth?

9 A. Yes.

10 Q. And Larry Doud's not on this email, right?

11 A. He is not.

12 Q. Did you ever speak to Larry about this email?

13 A. I don't know.

14 Q. You don't remember?

15 A. No.

16 Q. Did you ever specifically address the topics of this email
17 with Larry?

18 A. I don't recall. I don't know.

19 MR. TOWNSEND: Thank you.

20 THE COURT: Any further questions of this witness?

21 MR. BURNETT: No, your Honor.

22 THE COURT: Thank you, sir, you can step down.

23 (Witness excused)

24 THE COURT: Could we take the lunch break now because
25 their lunches are here?

M1JBDOU3

Masseth - Recross

1 MR. BURNETT: Yes, your Honor.

2 THE COURT: We'll do that, ladies and gentlemen.

3 Don't discuss the case. Keep an open mind. I'm going to bring
4 you back in at 1:55 and we'll continue with the next witness.

5 All right. I'll see you at that time.

6 (Jury not present)

7 THE COURT: We'll continue at 1:55 with the next
8 witness.

9 (Luncheon recess)

10 (Continued on next page)

Mlj3dou4

Bouck - Direct

1 AFTERNOON SESSION

2 1:55 p.m.

3 THE COURT: Is there anything we need to address
4 before we get the jury? Let's bring the jury in.

5 (Jury present)

6 THE COURT: Would you call the government's next
7 witness.

8 MR. ROOS: The government calls Jessica Pompeo Bouck.

9 THE COURT: Would you step into the box, please, thank
10 you.

11 You can inquire.

12 JESSICA POMPEO BOUCK,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ROOS:

17 Q. Good afternoon, Ms. Bouck. It looks like you lost the
18 little white thing on your speaker, which might be okay, but it
19 may create a little static.

20 THE COURT: Let's give her another.

21 A. Got it.

22 Q. Are you currently employed?

23 A. Yes.

24 Q. Where do you work?

25 A. Avantor. A-V-A-N-T-O-R.

Mlj3dou4

Bouck - Direct

1 Q. Where did you work before Avantor?

2 A. Rochester Drug Co-Operative.

3 Q. Is Rochester Drug Co-Operative sometimes referred to as
4 RDC?

5 A. Yes.

6 Q. What's RDC?

7 A. It was a pharmaceutical wholesaler.

8 Q. What kind of things did RDC wholesale or distribute?

9 A. We sold pharmaceutical drugs, we sold over-the-counter
10 medicines like Tylenol, Neosporin, things of that nature.

11 Durable medical equipment. Part of the controlled substances
12 was also part of the pharmacy prescription drug part we would
13 sell.

14 Q. What's a controlled substance?

15 A. It is a -- give me a second. Sorry.

16 Q. That's okay.

17 A. It is a scheduled drug that is scheduled by the FDA and the
18 DEA because it is regulated because it can be abused.

19 Q. Okay. Give us some examples of controlled substances.

20 A. OxyContin, Suboxone, hydrocodone, tramadol, methadone.

21 Q. And when did you start working at RDC?

22 A. November of 2013.

23 Q. How long did you work at RDC?

24 A. Until March of 2021.

25 Q. When you were hired, what job were you hired to do?

Mlj3dou4

Bouck - Direct

1 A. I was hired as a compliance specialist.

2 Q. So what's that job?

3 A. My job was to work in compliance for the controlled
4 substances. I was to analyze pharmacy dispensing data, set up
5 new customers, handle customer controlled substance orders.

6 Q. By the way, here is a tough question for you: When you
7 started at RDC, did you have a different name?

8 A. I did.

9 Q. What was your name at that time?

10 A. Pompeo.

11 Q. Why did you change it?

12 A. I got married and my husband made me.

13 Q. From November 2013 through 2016, did your title change?

14 A. It did.

15 Q. Can you explain your title change?

16 A. I just went from being a compliance specialist to at some
17 point in time we changed it to a compliance analyst, that was
18 for all the specialists, and then I became a compliance
19 manager.

20 Q. So just to be clear, were the responsibilities different of
21 a compliance analyst or specialist, or is that just sort of a
22 title change?

23 A. It was just a title change.

24 Q. When you were hired in November 2013, were there other
25 employees at RDC responsible for doing the job of compliance?

Mlj3dou4

Bouck - Direct

1 A. When I started, it was really just Bill Pietruszewski.

2 Q. And what was his job?

3 A. He was the compliance manager. He also was the operations
4 manager I believe.

5 Q. And we'll go back to the compliance manager part. What is
6 operations manager?

7 A. Operations manager?

8 Q. Yes.

9 A. He just was in charge of warehouse operations. That's --
10 yeah. Whatever that would entail. Managing the employees back
11 there and the product shipments and receiving product.

12 Q. Now, from when you were hired in 2013, through 2016, were
13 there any other analysts or specialists in the compliance
14 department?

15 A. Yeah, eventually we hired more analysts.

16 Q. Who is that?

17 A. Elizabeth Cullen was one of them, Amy Skibickyi, and Karen
18 Stevens.

19 Q. What experience did they have in compliance before working
20 at RDC?

21 A. They didn't really have any compliance experience.

22 Q. Do you know their backgrounds?

23 A. Amy, if I remember correctly, was an administrative
24 assistant. Elizabeth, I just remember she worked at like Jam
25 Studios or something like that. And Karen Stevens worked at

Mlj3dou4

Bouck - Direct

1 RDC in our accounting department.

2 Q. From the time you started until the end of 2016, were there
3 other employees besides ones you've named in the compliance
4 department?

5 A. Yes.

6 Q. Who is that?

7 A. Julius Morton, and I believe during that same time, around
8 that time somewhere was William Delgado.

9 Q. What was those two individuals' jobs?

10 A. They were, they were auditors, they were compliance
11 auditors, they would go to the stores.

12 Q. Within the compliance department, who did you report to
13 directly?

14 A. Bill Pietruszewski.

15 Q. Who did you ultimately answer to?

16 A. Larry Doud.

17 Q. From the time you started, through the end of 2016, were
18 there enough compliance specialists or analysts to do all the
19 responsibilities you described in compliance?

20 A. No. We were -- no.

21 Q. Why not?

22 A. There was just a lot of work to do. We had, if I remember
23 correctly, over 700 customers, and there was a lot happening on
24 a daily basis we had to do, and there just wasn't enough help.

25 Q. Can you give some examples of the things you weren't able

Mlj3dou4

Bouck - Direct

1 to do?

2 A. We weren't able to closely watch all the customers ordering
3 that was supposed to be coming in, at least to the point of --
4 we weren't able to analyze the data that was coming in with
5 their orders to investigate their orders. We weren't able to,
6 we didn't have time to thoroughly or even at all go through
7 dispensing reports that came in that would show us what was
8 going on within the pharmacy.

9 Q. Were people outside the compliance department aware of
10 these problems?

11 A. Yes.

12 Q. Who, to your knowledge, was aware?

13 A. Outside the compliance department, upper management.

14 Q. What do you mean by upper management?

15 A. Larry Doud and Joe Brennan.

16 Q. How do you know they were aware?

17 A. I personally talked to them about having a hard time
18 getting the work done that we needed to do.

19 Q. During the time period, did you ever talk to Doud and
20 Brennan about hiring more people in compliance?

21 A. I think my conversation with them had to do that we needed
22 more help.

23 Q. Okay. And what happened?

24 A. Karen Stevens was assigned to our department.

25 Q. What was the circumstances of that assignment?

Mlj3dou4

Bouck - Direct

1 A. Just that we needed -- that we needed more help, and I was
2 in a meeting with them about wanting to get the assignments we
3 had, the analysis done faster so we could get stores turned on
4 faster. And one of the areas that I had mentioned that would
5 be helpful is to have more assistants.

6 Q. And specifically, what's your understanding of why Karen
7 Stevens was moved from accounting over to compliance?

8 A. My understanding was that that -- whether it was the
9 accounting department or herself that she was -- she wasn't
10 supposed to be there. I don't know if they didn't want her
11 anymore or she didn't want to be there anymore, but the
12 position she'd been in for a very long time, and they wanted to
13 keep her within the company.

14 Q. So, did her reassignment solve the understaffing problem?

15 A. No.

16 Q. What types of work was the compliance department unable to
17 do because of the understaffing?

18 There is some water up there if you need it.

19 A. Okay. I brought mine. Thank you.

20 Just, we weren't able to completely fulfill the
21 assignments or the obligations that we had of reviewing and
22 analyzing dispensing data. We weren't able to thoroughly
23 investigate orders that went on hold before releasing them to
24 the customer, selling them to the customer. We were always
25 behind.

Mlj3dou4

Bouck - Direct

1 Q. Did you ever have any conversations with Larry Doud about
2 paying for compliance?

3 A. About paying for compliance -- in general?

4 Q. Yeah, let's start with in general.

5 A. The only conversation I -- I personally specifically -- I
6 don't know if it was me talking to Larry. I just remember at
7 least being in the room, and I don't know or remember what the
8 conversation was. I just remember Larry talking about
9 compliance and not wanting to spend money on compliance. And
10 that he thought it was like an insurance policy that he had to
11 pay for, because you have to have it, but he didn't want it.

12 Q. What do you mean by like an insurance policy?

13 A. I took it as like an auto insurance, you have to pay for
14 it, you have to have coverage on your vehicle. But you don't
15 necessarily want to have to pay for it.

16 Q. As in it keeps you safe or you're legally required?

17 A. I took it as you're legally required because that's --
18 that's how I took it.

19 Q. I want to take a step back and talk a little bit about the
20 compliance department generally.

21 Rochester Drug, you said, was a company that
22 distributed controlled substances?

23 A. Yes, yes.

24 Q. And are companies like Rochester Drug that distribute
25 controlled substances regulated?

Mlj3dou4

Bouck - Direct

1 A. Yes.

2 Q. Who regulates them?

3 A. The government.

4 Q. Do you know what -- I'm sorry.

5 A. The DEA.

6 Q. Are you familiar with the regulations and requirements on
7 distributors like Rochester Drug?

8 A. Yes.

9 Q. What are some of those requirements?

10 A. Manufacturers and distributors are supposed to design and
11 operate a system to ensure that the distribution of controlled
12 substances are for a legitimate -- are being sold for
13 legitimate purpose to customers for legitimate needs, and we're
14 supposed to monitor that. And to the best of our ability to
15 make sure that the customers are legitimate customers, that
16 they're dispensing them correctly, and we're supposed to report
17 any suspicious activity or suspicious ordering.

18 Q. When you are monitoring for legitimacy, what are you trying
19 to prevent?

20 A. We're trying to prevent diversion of controlled substances
21 being used illicitly, like street drugs.

22 Q. So I want to break down each of those things.

23 Let's start with what do you mean by diversion of
24 controlled substances?

25 A. Being used other than for a purpose than what they are

Mlj3dou4

Bouck - Direct

1 intended to use. Being sold on the streets for someone to get
2 high.

3 Q. When you talk about a drug being diverted, who is doing the
4 diversion?

5 A. We were watching -- we didn't know the end patient. We
6 were watching the doctors that were writing for the opioid or
7 the controlled substance prescriptions, we were watching the
8 pharmacy to see if they were selling to patients that were
9 always paying cash and things like that. So we were watching
10 the doctors and the pharmacies, we didn't know the end user so
11 that was -- we were watching.

12 Q. Okay. And I think you earlier mentioned doing diligence on
13 the prescriptions. What do you mean by due diligence?

14 A. We had to, we had -- we would analyze the dispensing
15 reports, and we would research the doctors on the dispensing
16 report, and we would look at patterns within the dispensing
17 report to make sure there was no red flags.

18 Q. So I should have asked maybe earlier. What is a dispensing
19 report?

20 A. A dispensing report is when you have a prescription filled
21 in a pharmacy, a pharmacy dispensing a prescription to a
22 patient. So a dispensing report was a report that it didn't
23 list the patient information, but it listed like the
24 information about the prescription, when it was filled, perhaps
25 when it was written, the doctor who wrote it, the drug it was

Mlj3dou4

Bouck - Direct

1 for, and identifying information for the drug. And so we
2 analyzed that data.

3 Q. So what are we talking about practically, a spreadsheet or
4 a PDF document that just lists --

5 A. It could be both. But that's kind like an activity, like a
6 daily log of all the prescriptions that went out of their
7 pharmacy.

8 Q. So it shows every filled prescription and who the doctor
9 was and the amount and the drug?

10 A. Yup, with some other information, yes.

11 Q. You also said you would analyze that dispensing data for
12 red flags. What do you mean by red flags?

13 A. So, there was red flags that could potentially be an
14 indication of them being used illegally or diversion. So there
15 was red flags that were a lot of cash being paid for the
16 prescriptions, high dosages of narcotics, high dosages of a
17 controlled substances, patients coming from a -- a long
18 distance traveling to the pharmacy or out of state or the
19 prescriber being out of state. Like there was stuff we called
20 a cocktail combination. So it would be an opioid, a
21 benzodiazepine, an upper and a downer. It would be called the
22 trinity combination. So we would look for things like that.

23 Q. Why is a cocktail combination a red flag?

24 A. Because, it was a red flag if it was the same prescriber
25 writing it for the same patient. Although we didn't

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Bouck - Direct

1 necessarily know the patient, sometimes we would have a patient
2 code. So you could see it was the same patient code or the
3 same zip code or same address. So that's how we could -- and
4 it meant that it was being abused or -- generally, it meant
5 that it was being abused because of the combination of the
6 upper and the downer and like the sedative, I think it was a
7 tramadol or carisoprodol, oxycodone, and a benzodiazepine,
8 alprazolam.

9 Q. You mentioned high cash. So what is high cash?

10 A. We usually looked at anything over 10 percent as high cash.
11 Meaning the customer paid cash instead of having the pharmacy
12 run the prescription through their insurance company.

13 Q. I should have asked earlier. When you are doing all this
14 compliance work, is this on all prescriptions or just
15 controlled substances?

16 A. On just controlled substances.

17 Q. So we are talking about 10 percent, we're talking about
18 10 percent of the controlled substance prescriptions being paid
19 for in cash?

20 A. Yes.

21 Q. Okay. And you mentioned having a bunch of out-of-state
22 customers or patients. How would you quantify that; what was a
23 bunch?

24 A. Well, it would be, so we would look at out-of-state
25 patients or which we didn't always know unless we were provided

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Bouck - Direct

1 a zip code. Or prescribers that were writing for the
2 prescriptions. So if we would look to see the pharmacies in
3 upstate New York, but the doctor is from Florida, or West
4 Virginia or Texas, so that would be what we were watching for.
5 And if it was a consistent, it wasn't just one prescription out
6 of hundreds, it was a consistent thing that we saw throughout
7 the dispensing.

8 Q. So if you have, say, a few percentage of patients that are
9 from Ohio filling in Florida -- or sorry. Going to a doctor in
10 Florida and filling their prescription in New York, that's what
11 you mean by out of state?

12 A. Right. And it could be a patient, multiple prescriptions
13 from New Jersey filling them or even New York City filling them
14 in Rochester. If there is a consistent pattern as to why we'd
15 have to explain why the patient was coming driving
16 five-and-a-half hours to fill a narcotic prescription.

17 Q. When you say high dosage, what do you mean by that?

18 A. We generally went by the New Jersey standards of six pills
19 per day or 120 total units in a 30-day period. Actually, I
20 don't think it was six because that would put it at -- we
21 usually watch anything that was at 180 pills and over -- and we
22 would call that a high dosage prescription. That meant that
23 the patient was getting more than six pills per day. That's
24 what it looked at it as.

25 Q. Switching over to the other responsibility you mentioned.

Mlj3dou4

Bouck - Direct

1 Suspicious order monitoring. What do you mean by that?

2 A. Part of our responsibility was to design a system for
3 identifying suspicious activity, suspicious ordering from a
4 pharmacy. If they're over ordering or if there is unusual size
5 or frequency to the amount of controlled substances -- I'm
6 sorry. I have to slow down.

7 If there was an unusual amount of ordering that they
8 were doing, they were ordering more often or they were ordering
9 in larger amounts, so we had to create a monitoring system that
10 would flag and hold those orders for us to investigate.

11 Q. If RDC identified a suspicious order, what was it required
12 to do?

13 A. It was supposed to investigate the order and report the
14 order to the DEA.

15 Q. How do you know about these requirements on distributors
16 like RDC?

17 A. Because of training that I went to at DEA conferences,
18 reading the regulations.

19 Q. Let's dig in a little bit more on the suspicious order
20 monitoring.

21 Did RDC have a system in place for monitoring
22 suspicious orders?

23 A. Yes.

24 Q. What types of orders are we talking about, all orders or
25 just controlled substance orders?

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Bouck - Direct

1 A. Controlled substance orders.

2 Q. Just to be clear, did RDC have a written protocol for
3 suspicious order monitoring?

4 A. Yes.

5 Q. Was there also a computer system for detecting these
6 things?

7 A. Yes.

8 Q. So, let's start with can you describe how the computer
9 system for identifying suspicious orders worked.

10 A. The computer system was set up that it would -- it would
11 monitor a customer's controlled substance orders that were
12 coming in to us as the distributor, and it would put controlled
13 substances into a group we previously identified it by. There
14 is 300 different groups, whether it be oxycodone, tramadol,
15 methadone, Vicodin. So we had different groups, so it would
16 watch those orders coming in, and they had an assigned limit,
17 an amount that they could buy, a threshold on that group. So,
18 we would monitor it if they hit that threshold. We would even
19 monitor it if they were getting close to that threshold by
20 percentage alerts, so we could look into why they were ordering
21 more than normal.

22 Q. Then under RDC's written policy, what was an RDC employee
23 supposed to do when an order hit that threshold?

24 A. We were supposed to investigate why the customer was
25 ordering more than normal, and we were supposed to call the

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Bouck - Direct

1 pharmacy, we were supposed to request updated dispensing
2 reports that we could look in to see if there was a legitimate
3 reason for their ordering more.

4 Q. Let's take a look at the written policy. I'm showing you
5 what's in evidence as Government Exhibit 29.

6 Can we have that up on the screen for the witness, the
7 Court and the jury.

8 MR. ROOS: Ms. Drescher, can we please zoom in on the
9 first paragraph.

10 Q. Ms. Bouck would you read the title on the document and then
11 the first paragraph.

12 A. Sure. The title is: Overview of suspicious order
13 monitoring (SOM) of RDC.

14 And the first paragraph reads: RDC has categorized
15 all controlled substances into over 300 groups which include
16 both brand and generic forms of each drug. We measure the
17 store's historical purchases within each group, by dispensing
18 unit and derive a monthly average based on a 12-month rolling
19 history. Once we calculate your monthly average, RDC will use
20 a multiplication factor to determine an allowable limit for
21 purchasing. RDC will use a multiplier of 1.5 for narcotics and
22 a multiplier of 2 for controls which are sufficient for a
23 pharmacy growth of business.

24 Q. What's this referring to?

25 A. That was, that was our monitoring system that would

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Bouck - Direct

1 determine the amount of a specific controlled substance group
2 that a customer could order from RDC within a given month.

3 Q. Can you give us example of how this works in practice.

4 A. So, don't ask me to do the math. If a customer ordered on
5 average every month one 500-count bottle of oxycodone
6 30 milligrams, or actually, any type of oxycodone, total it was
7 500 units, we would take a 12-month period, whether it be
8 January through December, February through January, it was a
9 12-month rolling period. We would take the average of that
10 total units, those 500 bottles, so times 12 is, what, 7,000 --
11 I don't know. It doesn't matter. Anyway, we average it out,
12 we would divide it by 12, and then we would multiply it by 1.5
13 for a narcotic or 2 for a controlled substances.

14 Q. Just to be sure it's clear. If a pharmacy's average was
15 500 bottles a month. And that's what they ordered every month,
16 so their average across 12 months was 500 bottles a month.
17 Then, the limit would be 1.5 times that 500 average, so 750
18 would be their limit?

19 A. Right.

20 Q. Okay. And has it always been a 1.5 or 2 multiplier?

21 A. No, when I started with RDC, it was a multiplier of 3 for
22 narcotics and 5 for Schedule III through Vs.

23 Q. Schedule III through Vs refers to the schedule of
24 controlled substance?

25 A. Yes.

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Bouck - Direct

1 Q. Can we zoom out and zoom in on the third paragraph. In the
2 third paragraph, but midway down, maybe I can -- I don't dare
3 touch it.

4 It says: If for some reason a customer would go over
5 100 percent of a narcotic/control the complete order is put on
6 hold.

7 What's that referring to?

8 A. It means if they ordered -- if their limit was 1,000 and
9 they ordered 1,001 pills, it held that controlled substance
10 order that product was on.

11 Q. According to the policy, what would RDC do when an order
12 was put on hold?

13 A. We would, according to the policy, we were supposed to
14 request dispensing and investigate the order and request any
15 additional information that would help us to research as to why
16 they were ordering the amount that they were.

17 Q. Later in this policy, what sort of things does the policy
18 say you look for in the data?

19 A. If you're referring to what type -- yeah, so you were.

20 The type of data we were looking for was the drug
21 name, the national drug code called the NDC, we were looking
22 for the quantity dispensed, the doctor's name, the day supply,
23 the doctor's DEA number so we could look into the prescriber
24 themselves, the payment form of the prescription -- and I'm
25 drawing a blank if there is more. Sorry.

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Bouck - Direct

1 Q. Let's flip to page two zoom in on the first paragraph. You
2 see there is a sentence that begins "once these answers are
3 given." I will read that to you.

4 Once these answers are given, it would help to
5 determine if RDC will allow the order to be filled or still
6 keep the order on hold.

7 So the question is, what determined whether RDC filled
8 the orders or kept them on hold under the written policy?

9 A. It was determined by if we could -- by looking at the
10 explanation, the dispensing information and other data acquired
11 that it was being dispensed for a legitimate medical purpose.

12 Q. What would happen if you couldn't determine whether it was
13 legitimate or not under the policy?

14 A. Under the policy, we were supposed to not ship the product
15 to the customer, and we were supposed to report the customer to
16 the DEA, the local field office.

17 Q. So, can you read from the last two sentences of this
18 paragraph that we're zoomed in on.

19 A. Yes.

20 It reads: If after all that, the customer still does
21 not comply, RDC management will need to determine continuing
22 with our services to this customer. If service would be
23 stopped to a customer, RDC will then notify the local DEA
24 office of an order of interest.

25 Q. What does that mean?

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Bouck - Direct

1 A. It means that if we determined or we couldn't determine the
2 legitimacy of the order, that we would not ship the order, we
3 may make the decision to stop selling any controlled substances
4 to the customer, and we would report the customer and the
5 actual order that was on hold to the DEA.

6 Q. The language here mentions something called an order of
7 interest. What's the difference between an order of interest
8 and a suspicious order?

9 A. An order of interest is a potential suspicious order. It
10 didn't necessarily mean it was a definite one, but it meant
11 that it could be.

12 Q. So how does an order of interest grow into a suspicious
13 order?

14 A. It becomes a suspicious order when we can't validate the
15 customer's reason for ordering. Or if we, upon looking into
16 why the customer was ordering more, we determined that there is
17 other areas that are concerning within the pharmacy.

18 Q. We can zoom out here. Let's zoom in on that little box at
19 the bottom. It says a version of June 30, 2014.

20 Was a version of this policy in effect when you
21 started in 2013?

22 A. Yes.

23 Q. And was it the same or different than the written policy
24 we're reading right here?

25 A. I, from what I recall it was the same. Except for the

Mlj3dou4

Bouck - Direct

1 multiplication factors were different that we looked at in the
2 beginning, they were a 3 and a 5.

3 Q. Was the suspicious order monitoring policy written or
4 revised again between 2014 and the end of 2016?

5 A. Yes.

6 Q. Approximately when was that?

7 A. I believe it was in January of 2015.

8 Q. I'm showing you -- I'm not sure if this is in evidence so
9 I'll show it for identification -- government Exhibit 276.

10 Just for witness and the Court and the parties.

11 Ms. Bouck, what's this?

12 A. This is a customer due diligence and suspicious order
13 monitoring reporting policies and procedures.

14 Q. Are you familiar with it?

15 A. Yes.

16 Q. From your work at RDC?

17 A. Yes.

18 Q. Approximately when is it from?

19 A. Revised January 22, 2015.

20 MR. ROOS: Ms. Drescher, can we flip through it so the
21 witness can see the entirety of it.

22 Q. Is that a true and accurate copy of the policy?

23 A. Yes.

24 MR. ROOS: The government offers 276.

25 THE COURT: Any objection?

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Bouck - Direct

1 MR. TOWNSEND: No objection.

2 THE COURT: It will be admitted in evidence.

3 (Government's Exhibit 276 received in evidence)

4 Q. Let's start at the top. What's the title of this document?

5 A. Customer due diligence and suspicious order
6 monitoring/reporting policies and procedures.

7 Q. What's it dated?

8 A. January 22, 2015.

9 Q. This was RDC's working policy as of that date?

10 A. Yes.

11 Q. And let's look under the heading called suspicious order
12 overview. Do you see that?

13 Can you read the first three sentences there.

14 A. Yes.

15 Drug Enforcement Administration (DEA) regulations
16 require distributors and manufacturers to conduct due diligence
17 of their customers to minimize the risk that those customers
18 will divert controlled substances. DEA regulations further
19 require distributors to design and operate a system that
20 discloses to the registrant suspicious orders. DEA guidance
21 states that distributors cannot fill orders that they determine
22 are suspicious; DEA regulations require that they report them
23 to the local DEA field division upon discovery.

24 Q. Does this policy say what a suspicious order is?

25 A. It does.

Mlj3dou4

Bouck - Direct

1 Q. Can we please zoom in on the next paragraph here that
2 begins "DEA regulations define" through all but the very last
3 sentence on that page.

4 A. So --

5 Q. And Ms. Bouck, would you mind reading the first two
6 paragraphs there.

7 A. The first of the two paragraphs?

8 Q. Both the first two paragraphs, paragraphs one and two that
9 are zoomed in on.

10 A. Okay.

11 DEA regulations define suspicious orders as:

12 Orders of unusual size;

13 (b) Orders deviating substantially from a normal
14 pattern; and

15 (c) Orders of unusual frequency.

16 Orders of controlled substances that are likely to be
17 diverted from legitimate channels are also suspicious orders.

18 Q. So for A, B and C, what's your understanding of that?

19 A. I don't --

20 Q. DEA regulations define suspicious orders as, and then (a)
21 orders of unusual size; (b) orders of deviating substantially
22 from a normal pattern; and (c) orders of unusual frequency.

23 My question is what does that mean to you? What's
24 your understanding of that?

25 A. That would -- okay.

Mlj3dou4

Bouck - Direct

1 That would be my understanding of that is that's why
2 we had our monitoring system, so any order that was larger than
3 normal, they're ordering more of a controlled substance than
4 they would on an average basis, so it's an unusual size for the
5 customer, they're ordering more or they're ordering more often,
6 they used to only order one bottle a month and now they're
7 ordering more, like three bottles a month, or they're deviating
8 from the pattern of what they normally order for a controlled
9 substance.

10 Q. And the next sentence after that, can you explain your
11 understanding of that?

12 A. So, suspicious orders were not just unusual size, frequency
13 or pattern. A suspicious order could be also when there is an
14 indication that it's not being dispensed by the pharmacy to be
15 used for a legitimate medical reason.

16 Q. Now, you've mentioned a few times that RDC had a system for
17 identifying orders of interest. Let's turn to page six. Can
18 you read the last three sentences under the heading orders of
19 interest/suspicious orders before the subheading.

20 A. It reads: Orders of interest are potential suspicious
21 orders that meet or exceed the customer's established
22 purchasing threshold or other criteria.

23 RDC will investigate orders of interest to determine
24 whether they are suspicious orders.

25 Suspicious orders cannot be filled and must be

Mlj3dou4

Bouck - Direct

1 reported to DEA.

2 Q. Let's zoom out of this and zoom in on subheading (a)
3 purchase thresholds. And Ms. Bouck, you don't have to read it,
4 but what does this relate to?

5 A. This is similar to what we read on the previous policy,
6 that defines how the amount that a customer can purchase within
7 a given amount, given month was established, like what their
8 ordering limit was on a controlled substance.

9 Q. All right. Now let's go to page seven. Can we look under
10 subheading (d), just zoom in on all of it.

11 The first sentence mentions red flags that may
12 indicate that a pharmacy may be dispensing controlled
13 substances for other than a legitimate medical purpose and
14 whose orders are therefore potentially of interest and
15 suspicious.

16 Do you see that?

17 A. Yes, I do.

18 Q. Here's the question: If one of those red flags listed
19 below exists, is the order potentially suspicious?

20 A. It could potentially be suspicious, yes.

21 Q. What are some of those red flags listed here?

22 A. So, it talks about dispensing highly abused substances. It
23 gives examples of those, and it talks about those either being
24 dispensed by themselves or combined with other controlled
25 substances. A customer or pharmacy that only attempts to or

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Bouck - Direct

1 only purchases controlled substances from RDC, not other -- or
2 distributor -- and not other products such as other
3 prescription medicine or over-the-counter medicine. A customer
4 who would attempt to purchase only highly abused controlled
5 substances, so like oxycodone, hydrocodone, opioids that are
6 highly abused. Dispensing quantities that are higher than
7 acceptable medical standards. So high dosages, when they're
8 prescribing numerous pills per day for the patient, or the same
9 controlled substance being prescribed over and over for every
10 patient by that physician. So it was every time they wrote for
11 oxycodone 30 milligrams, it was always 90 pills, there was no
12 consideration of the patient's weight, age or anything like
13 that. It was always oxycodone 30, 120 pills, 90 pills,
14 whatever it might be. And also, that there is a high
15 percentage of cash, the prescriptions being filled at the
16 pharmacy versus the prescriptions being run through the
17 patient's insurance.

18 Q. And then is there also an appendix to this document?

19 A. Yes.

20 Q. Let's look at 11 and 12 briefly. Pages 11 and 12. Is this
21 that appendix?

22 A. Yes.

23 Q. Does it list just the red flags you mentioned or some
24 others?

25 A. There's more.

Mlj3dou4

Bouck - Direct

1 Q. Now, is RDC supposed to sell controlled substances to a
2 customer who does not provide requested information?

3 A. No, we were not supposed to.

4 Q. Let's look at the bottom of page nine. What's RDC's
5 suppose -- RDC employees, what are they supposed to do as they
6 are evaluating whether or not an order is suspicious?

7 A. Based on this paragraph or --

8 Q. Let's start with this paragraph.

9 A. Okay. So, we were supposed to, when we were investigating,
10 we were supposed to investigate a held order, an order of
11 interest, and we were supposed to document the information that
12 we received from the customer, and it lists some specifics that
13 we were supposed to document. And we should also, within that
14 note taking or that documentation, we were supposed to list the
15 reason why we determined it was either suspicious or not
16 suspicious.

17 Q. Do you know whether Larry Doud saw this policy?

18 A. Yes, I believe he was involved during the making of it.

19 Q. How do you know that?

20 A. Because I was also involved and I remember him being
21 present.

22 Q. Did RDC follow the suspicious order monitoring policy as it
23 was written?

24 A. No, we did not.

25 Q. How did it not?

Mlj3dou4

Bouck - Direct

1 A. We didn't always investigate an order of interest, a held
2 order. We didn't report held orders, suspicious orders.

3 Q. So when you said you don't always investigate, what did you
4 do instead?

5 A. At times we would just release the order.

6 Q. So let's break all this down.

7 First of all, when an order of interest went on hold,
8 what was RDC's -- what did RDC's policy say it was supposed to
9 do?

10 A. When an order of interest went on hold, our policy stated
11 we were supposed to investigate by requesting updated
12 dispensing, by collecting further information from the
13 pharmacy, by looking at that dispensing to determine if there
14 was a good reason or a legitimate reason to sell that
15 controlled substance to the pharmacy.

16 Q. Did RDC investigate orders of interest always?

17 A. No.

18 Q. What happened instead?

19 A. We just released them.

20 Q. What do you mean by that?

21 A. We just let the customer have the order, whatever they were
22 ordering that went on hold.

23 Q. If they went over the code on limit, you would just release
24 it?

25 A. Yes.

Mlj3dou4

Bouck - Direct

1 Q. Why were orders released without investigation?

2 A. There could be various reasons. It could be because we --
3 this was the process. It was what we were told to do,
4 especially for specific customers.

5 Q. So what do you mean it was what we were told to do?

6 A. There was specific customers that we -- or myself were told
7 to release that if they went on hold or to take care of the
8 customer and we'll get the information later.

9 Q. So before we get into specific customers, who told you
10 that?

11 A. In some instances, it would have been my boss, Bill
12 Pietruszewski. In other instances it would have been Larry
13 Doud who came in and -- or seen me or came into my office and
14 asked me what was going on with the customer and asked me to
15 take care of the order and we would get the documentation
16 later.

17 Q. Let's talk about some of those customers. So, which were
18 the customers or what were the type of customers you would just
19 release the orders for?

20 A. The customers that -- you are asking for their names?

21 Q. Let's start with category. What category of customers
22 would you just release the orders for?

23 A. Some of them would be like -- important customers is the
24 category. They didn't fit like a definite -- business --
25 business model. They were important customers, they were

Mlj3dou4

Bouck - Direct

1 sometimes it might have been a board member's pharmacy. Or
2 customers that were our big customers, our big money customers.

3 Q. Give me some example, some names.

4 A. The biggest one I think of is Linden Care Pharmacy. I also
5 think of -- I know there was other ones. The board member one
6 I'm thinking of is -- I think it was Seventh Elm if I remember
7 correctly. It was from Boris. And I think there's other --
8 that's kind of foggy.

9 Q. Okay.

10 A. On names.

11 Q. Let's look at a document. Can we please have Government
12 Exhibit 109G which is in evidence. Let's start by zooming in
13 on the bottom e-mail in this chain.

14 And who did the e-mail come from and who did it go to?

15 A. This e-mail came from our actually order monitoring system.
16 It was the office RDC alerts. And it went to our IT manager,
17 and members of the controlled substance or compliance team,
18 Julius Morton, Bill Pietruszewski, myself, and then Pam
19 Mercendetti and Maritza Rosa worked in our vault area.

20 Q. Can you explain what sort of information is in the body of
21 the e-mail?

22 A. It is a high percentage alert. Meaning that although the
23 customer hadn't placed the order yet, it was just sitting in
24 their shopping basket, let's say, they had a bottle of
25 oxycodone 30 in their shopping basket, and with that bottle

Mlj3dou4

Bouck - Direct

1 there is a pending order. It would have been put them, Seventh
2 Elm Drugstore, at 103 percent of their limit.

3 Q. Anything stand out to you about Seventh Elm Drugstore?

4 A. To the best of my recollection, they were owned by a board
5 member.

6 Q. Anything about this particular drug that's covered here
7 that was a concern?

8 A. It is oxycodone. 30 milligrams of oxycodone is a highly
9 abused opioid.

10 Q. Let's look at the e-mail above this. Let's start with your
11 response to the e-mail.

12 A. My response is I asked Bill Pietruszewski what we should do
13 with the order that I had been waiting months for dispensing.

14 Q. What did you mean by that?

15 A. I wanted to know from him direction on what I should do
16 with the customer's order. That we -- part of our SOP stated,
17 our monitoring policy stated we needed updated dispensing to
18 review as part of our investigation, and I was waiting, I was
19 still waiting, I had requested it multiple times, I was still
20 waiting to get that from the pharmacy.

21 Q. Under your written policy, what were you supposed to do
22 once it exceeds the threshold?

23 A. I was supposed to investigate as to why it was going over
24 the threshold and part of that was by requesting dispensing.

25 Q. So what was Bill Pietruszewski's response?

Mlj3dou4

Bouck - Direct

1 A. Bill replied saying let it go, I will try and call her
2 tomorrow morning.

3 Q. Do you have an understanding of whether this is the type of
4 decision Bill would make on his own or whether he would need to
5 consult with upper management?

6 MR. TOWNSEND: Objection.

7 THE COURT: Sustained as to the form of the question.

8 Q. Okay. Let me ask you, what is your understanding of
9 whether Bill Pietruszewski needed to consult with upper
10 management on compliance questions?

11 MR. TOWNSEND: Objection.

12 THE COURT: Overruled. You can answer that.

13 A. So what was -- what he had to ask about compliance
14 questions, when it came to compliance questions? I just that
15 we needed, when it came -- we needed to approve action on
16 customers, with the exception of a temporary suspension, we had
17 to approve any action that we were taking with customers with
18 Larry and upper management.

19 Q. So, sorry. What exactly does that mean?

20 A. We couldn't -- we couldn't just terminate a customer, we
21 couldn't report a customer without getting approval to do so.

22 Q. Was it, was letting an order go like this without review on
23 dispensing what RDC policy said should happen?

24 A. No.

25 Q. Was it your understanding that was what was required by

Mlj3dou4

Bouck - Direct

1 DEA?

2 A. That we should just release it? No.

3 Q. Why not?

4 A. Because if we just released it without investigating it, we
5 weren't following the requirement to ensure that this medicine
6 wasn't being used for illicit reasons, for reasons that were
7 not for legitimate reasons.

8 Q. Speaking generally, was this just a one-time thing of
9 letting this particular order go?

10 A. No.

11 Q. What do you mean?

12 A. No, there was -- there was customers that, it was just
13 procedure that when their order went on hold, we just took care
14 of them. We just -- meaning we just released their orders.

15 Q. And why was that?

16 A. Because that was what was expected of us to do. That we,
17 that we were told, either directly or indirectly, to take care
18 of the customer and that we would get the data later.

19 Q. Who -- who raised that expectation?

20 A. Without -- with the exception of Bill telling me about
21 Linden Care, if there was other stores he told me to, I don't
22 necessarily remember, but other stores would have been Larry
23 telling me to get the customer the order.

24 Q. My question was, who gave you the expectation that you were
25 going to do that?

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Bouck - Direct

1 A. I guess I don't understand what you're asking.

2 Q. The question was unclear by me.

3 I think you had said you had, you understood there was
4 an expectation you would release orders; is that right?

5 A. Yes.

6 Q. And I'm wondering who, if anyone, told you that, that made
7 you have that expectation?

8 A. That's where it would have come from, from Bill or Larry,
9 that we took care of the customers.

10 Q. Let's look at another document. Can we please see
11 Government Exhibit 110G which is in evidence so it could be
12 shown to everyone. Let's start on page two. Actually I guess
13 if we straddle the two pages.

14 And can you explain to the jury what we're seeing
15 here?

16 A. At the bottom is an order of interest for Aliton's Managed
17 Care Pharmacy. The group tramadol. And it is showing the
18 customer's information, the salesman's name, the order number,
19 and the specific item that they were trying to order. This
20 customer had a maximum units override or a maximum amount to
21 purchase of 2,000 units. They were trying to order
22 two 1,000-count bottles of the tramadol 50, bringing them to
23 2,000 units, but their current month group unit sales was
24 already 2,000. So this would have been brought them to 4,000
25 units.

Mlj3dou4

Bouck - Direct

1 Q. What's tramadol?

2 A. It is a Schedule IV controlled substance.

3 Q. Let's go to the next e-mail up in the chain. The next in
4 time. Can we zoom in on that. I'm sorry, you're right. Let's
5 do the next two e-mails.

6 And so in the middle of the first page here we have an
7 e-mail from Elizabeth Cullen. Who was Elizabeth Cullen again?

8 A. She was one of our compliance analysts.

9 Q. And she says in her e-mail -- actually. Sorry, let's go
10 one more e-mail up. My apologies.

11 So at the bottom e-mail here, you can see where she
12 says: He also promised to send dispensing and I e-mailed him
13 all the info but I really don't like the idea of sending him
14 anything else until he actually does.

15 What did you understand her to be saying?

16 A. That we needed dispensing from that customer.

17 Q. And what was she saying she did or did not want to do?

18 A. She didn't want to release the order that was on hold for
19 that tramadol until we received dispensing.

20 Q. And can we highlight the sentence in the above e-mail that
21 begins "unfortunately these stores."

22 And will you read that, Ms. Bouck, the highlighted.

23 A. Yup. It reads: Unfortunately, these stores fall into the
24 "have to" bracket I believe.

25 Q. What do you mean by "have to" bracket?

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Bouck - Direct

1 A. Those were the stores that I -- I just referenced that
2 there is an expectation we would take care of releasing their
3 orders.

4 Q. Where did the "have to" bracket come from?

5 A. I suppose, I would say the expectation like we had to, we
6 were told to, either directly or indirectly, to take care of
7 the customer.

8 Q. Did RDC ever change the order limits for customers so they
9 wouldn't trigger orders of interest?

10 A. Yes.

11 Q. How did that work?

12 A. That was, we would look, when get a high percentage alert,
13 it is usually when it would happen. That it was indicating
14 that the customer was going to, if they hit place the order,
15 they would go over the limit and generate an order of interest.
16 We would look at the customer's dispensing, and if the customer
17 actually dispensed or filled more prescriptions for that drug,
18 more units than they actually purchased from us, we would at
19 times increase the amount that they could purchase to that
20 amount plus a multiplication factor.

21 Q. So what was the purpose of moving the threshold up?

22 A. It was to prevent -- I mean, it was to prevent an order
23 getting held or an order of interest.

24 Q. Was that practice written into RDC's policy?

25 A. No.

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Bouck - Direct

1 Q. Let's look at another document, can we please see
2 Government Exhibit 107F which is in evidence. And can we start
3 at the bottom.

4 What are we looking at here it?

5 A. A DEA order of interest alert, so it is a high percentage
6 alert for Delmar Pharmacy for OxyContin.

7 Q. What, if anything, do you remember about Delmar Pharmacy?

8 A. If I remember correctly, we had issues with them. I don't
9 remember specifically what -- but I -- issues. By that I mean
10 that they presented areas of concern to our department.

11 Q. When you say "concerns," you mean like the red flags?

12 A. Yes.

13 Q. Let's look at the next e-mail above it. This e-mail is
14 from Amy Skibickyi. What was Amy Skibickyi's job?

15 A. She was a compliance analyst.

16 Q. She writes in this e-mail that Delmar is a primary with a
17 27,500 limit on OxyContin. They're currently at 105 percent.
18 And then she says a little later in that, she says their
19 average is 31,355.

20 So what does that mean?

21 A. That the -- so the 27,500 was their limit and that they
22 were, they had that amount in the bucket, I'm calling it for
23 explanation purposes. And that their recent dispensing, their
24 average dispensing was over 31,000 units.

25 Q. So regularly exceeding their limit?

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Bouck - Direct

1 A. Yes.

2 Q. Let's look at the top e-mail in the chain. And how did you
3 respond?

4 A. I told Amy to bump up the limit to 32,000 in hopes to
5 prevent any OIs or orders of interest for the rest of the
6 month.

7 Q. Why were you trying to avoid an order of interest?

8 A. Probably the practice was because they could get that
9 amount because they were dispensing that amount. And order of
10 interest caused us a lot of work.

11 Q. All right. Now, this practice of bumping a pharmacy up to
12 prevent an order of interest. Is that an idea you came up with
13 yourself?

14 A. No.

15 Q. Where did it come from?

16 A. It came from my boss.

17 Q. Who is that?

18 A. Bill Pietruszewski.

19 MR. GOTTLIEB: Your Honor, at this point, objection.
20 May we have a sidebar, please.

21 THE COURT: Let me give the jury a break so we don't
22 have to do a sidebar.

23 MR. GOTTLIEB: Thank you.

24 THE COURT: Ladies and gentlemen, we'll take a
25 15-minute break. Don't discuss the case, keep an open mind,

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Bouck - Direct

1 bring you back in 15 minutes.

2 (Jury excused)

3 THE COURT: You can step down.

4 THE WITNESS: I wasn't sure what to do. Thank you.

5 (Witness not present)

6 THE COURT: Yes, sir, Mr. Gottlieb.

7 MR. GOTTLIEB: Your Honor, thank you very much. Just
8 very briefly, it seemed to be the appropriate time because
9 there have been a lot of e-mails now introduced, they would be
10 hearsay unless of course there is an exception. It's not a
11 defendant, we are not talking about anything along those lines.
12 So I would ask for an offer of proof. Are these e-mails, for
13 example, this last series with Skibickyi to Pompeo, what is the
14 offer of proof to have those hearsay statements received in
15 evidence in the form of the e-mail, where we have the live
16 witness Jessica Pompeo on the stand.

17 MR. ROOS: Your Honor, this is something we briefed in
18 our motion in limine. They're plainly admissible under the
19 co-conspirator exception to the hearsay rule. They're
20 obviously, given her testimony, in furtherance of the charged
21 conspiracy. Second, is we also briefed that they are, she's
22 now laid the factual predication under the agency exception
23 based on her statements about who she reported to, both
24 directly and her ultimate decision maker was, and finally, many
25 of these are related to her then-existing mental state,

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1 impressions when she was doing these acts not necessarily --
2 they are not necessarily being offered, all of them, for their
3 truth. But I don't think your Honor needs to reach that,
4 because they're plainly admissible under those exceptions and
5 ultimately I think typically the practice is conditionally to
6 admit them and the jury can make that determination.

7 THE COURT: Well, I am assuming at this point, given
8 what I've read and what the testimony has been, that
9 Mr. Pietruszewski is going to testify, and the nature of his
10 testimony is going to be that he got these directions from
11 Mr. Doud and passed those directions down to the other
12 employees.

13 MS. ROTHMAN: That's an accurate summary of what
14 Mr. Pietruszewski will say, among other things.

15 (Continued on next page)
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1 MR. GOTTLIEB: Your Honor, I wasn't questioning that.
2 For example, the last email that was just discussed was
3 Skibickyi to Pompeo. Is the government saying that Amy
4 Skibickyi as well as Jessica Pompeo are co-conspirators,
5 because I heard that that was the number one exception to
6 permit this email to come in as statements of co-conspirators.

7 I simply want confirmation, because this has been an
8 issue for a few years that we've been in front of your Honor as
9 to who the co-conspirators are. So I heard Mr. Roos seem to
10 confirm, at least that for this last email, that Skibickyi and
11 Pompeo are co-conspirators; am I correct?

12 MR. ROOS: I don't think the Skibickyi one is offered
13 for the truth. It's just context for a later email where she
14 says, release it. And for the one above it, I think to the
15 extent it's being offered for the truth, it falls under the
16 co-conspirator exception and/or an agency exception.

17 MR. GOTTLIEB: Thank you. It was just really unclear
18 as to what's the extent of the co-conspirators', their emails
19 would then, therefore, be admissible.

20 THE COURT: I think that for me to make any particular
21 determination at this point with regard to the statement, I
22 think that at this point I am simply admitting them subject to
23 connection, and I think that connection will probably be
24 Mr. Pietruszewski's testimony as to what he said he was
25 directed to do by Mr. Doud.

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1 And so I think at this point, the testimony is
2 appropriate. And if there are any further instructions that
3 need to be given at a later point when other witnesses testify,
4 I'd be in a position to do that on request

5 MR. GOTTLIEB: Thank you.

6 THE COURT: Let's take a ten minute break and then
7 we'll continue.

8 (Recess)

9 (In open court; jury not present)

10 THE COURT: Let me just say a quick word about
11 tomorrow. I understand the weather might be a little bit
12 treacherous. I do intend to proceed tomorrow if everyone shows
13 up. It's not my intention -- particularly with some of the
14 jurors in the northern counties, it's not my intention to
15 excuse a juror simply because they can't get down here
16 tomorrow. If we do get a call from a juror who says they just
17 really can't make it tomorrow, then we're going to continue on
18 Friday when that juror hopefully shows up. The weather is
19 supposed to be better on Friday and we can continue.

20 So hopefully it won't be so bad that a juror can't
21 come down, but I want them to be safe, and I'll remind them
22 that we're a team and we can't start unless everyone arrives,
23 so that's my intention at this point.

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Bouck - Direct

1 (In open court; jury present)

2 THE COURT: You can continue, Mr. Roos.

3 MR. ROOS: Thank you, your Honor.

4 BY MR. ROOS:

5 Q. Just a few questions about where we left off. So for
6 starters, you had mentioned releasing orders of interest for --
7 you said big stores, among others. Do you remember that?

8 A. Yes.

9 Q. Just a question, were you only releasing orders for big
10 stores or was that also for other types of stores?

11 A. It was for other type of stores as well.

12 Q. And then just one question about some of these pharmacies,
13 for instance, Aliton's, were there some customers where there
14 was more than one store per customer?

15 A. Yeah, there would be some stores that's either had -- I
16 guess you would call them their sister store or they had the
17 same owner, but they had one, two, three other stores.

18 Q. I think when we left off, I asked you if there were ever
19 times when you placed an order on hold and you were overruled?

20 A. Yes, there were times.

21 Q. And who overruled you?

22 A. From what I remember, it would have been Bill
23 Pietruszewski.

24 Q. Let's look at Government Exhibit 106C in evidence. I'm
25 going to start at the bottom. What's this bottom email?

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Bouck - Direct

1 A. What is it, is that what you asked?

2 Q. Yes.

3 A. It is an order of interest for ProHealth pharmacy.

4 Q. Do you remember ProHealth pharmacy?

5 A. Yes.

6 Q. And what, if any, things were the issues with ProHealth
7 pharmacy?

8 A. To the best of my recollection, they had high dosage
9 opioids, narcotic prescriptions and other prescriptions,
10 controlled substance prescriptions and they had physicians that
11 we had flagged as suspicious or to watch on dispensing.

12 Q. Which drug is this order of interest about?

13 A. Endocet. It's a narcotic. It's an opioid.

14 Q. Now, the email above this, just for context, why don't we
15 start with reading the email from Amy Skibickyi to you?

16 A. Certainly. It reads: I only notated this account and
17 didn't do any releasing. On 9/24, they hit their limit with
18 the order that put them at a quantity of 7, 300 for the month.
19 They just did another order last night bringing them to 9, 400
20 for the month and someone had released that. You had notated
21 the limit note to state you didn't like their dispensing, were
22 requesting new dispensing and not to release anymore orders. I
23 just wanted you to be aware that they put in another big order
24 that was released by someone.

25 Q. And how did you respond?

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Bouck - Direct

1 A. I told Amy, thank you for the heads up and that I will
2 probably go through their dispensing very soon because I did
3 not like it at all.

4 Q. Can you explain what you meant by that email?

5 A. My response to her was, I appreciated her letting me know
6 that someone released the order and that there was -- I didn't
7 like the dispensing report from ProHealth.

8 Q. Under RDC's written protocol, what was required to release
9 this order?

10 A. What was required was updated dispensing and a review of
11 analysis of it to make sure it was legitimate.

12 Q. What, if any, notations would you -- or notes or records
13 would you make about the order?

14 A. What Amy was referring to in her email was a limit list
15 that the analyst would use to -- at times they didn't always
16 use it, but at times, especially then, they would just fill out
17 that the order went on hold. And if they released it, why they
18 released it, and then there was also notations made in our
19 software system where you had to go in to release the order.
20 You would make a notation in there.

21 Q. Let me show you what's in evidence as Government Exhibit
22 239. What is this document?

23 A. It's a DEA month end orders of interest report.

24 Q. What sort of information is listed in this report?

25 A. This is a report that generated automatically at the

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Bouck - Direct

1 beginning of each month for the prior month listing all the
2 orders that went on hold as an order of interest, as well as
3 any suspicious orders that were reported.

4 Q. Just looking at the first page of the report, do you see
5 where it says authorized and then there's a colon and then "Y"
6 happens a bunch of times on the page?

7 A. Yes.

8 Q. What does that "Y" mean?

9 A. It means that, yes, it was authorized to release.

10 Q. Right next to that first authorized "Y" there's a notation,
11 what does that refer to?

12 A. It was just kind of like a blanketed response by whoever
13 was releasing the order.

14 Q. Let's take a look at page 19 at the top. What pharmacy is
15 this order from?

16 A. ProHealth pharmacy.

17 Q. Is it the one we were just looking at?

18 A. I believe so.

19 Q. What happened with this order?

20 A. It was released.

21 Q. Was any investigation done on the order before it was
22 released?

23 A. Not based on the notes that Amy had -- Amy had said in her
24 email because I said not to release anymore and that it needed
25 an analysis.

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Bouck - Direct

1 Q. Let's go back to the first page of this. Ms. Drescher, can
2 we just flip page by page here. Ms. Bouck, if you could look
3 at the column about whether it's authorized, yes or no.

4 This document is 23 pages long. Approximately how
5 many orders of interest are listed on this document?

6 A. Probably close to a couple of hundreds, assuming there was
7 eight to ten orders of interest per page.

8 Q. And approximately how many were released?

9 A. They all say -- I did not see any noes. I saw all yeses for
10 authorized.

11 Q. Was this typical for a month?

12 A. Yes.

13 Q. By the way, do you have a binder in front of you?

14 A. I do.

15 Q. Ms. Bouck, remind us what the first month was that you
16 worked at RDC?

17 A. November of 2013.

18 Q. Let's go to Government Exhibit 229. You have it there. If
19 not, maybe it's up on the screen.

20 A. You said 229?

21 Q. It's up on the screen. Maybe that's the easiest.

22 A. All right.

23 Q. If we could just scroll through. This is for July 2014.
24 Just scroll through it.

25 MR. TOWNSEND: For the record, you said July 2014?

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Bouck - Direct

1 MR. ROOS: Yes.

2 MR. TOWNSEND: I'm seeing June 2014.

3 MR. ROOS: My apologies, June 2014.

4 Q. How many of the orders did you see that were not released?

5 A. I kind of got distracted slightly, so I'd have to -- I see
6 a lot of yeses. I didn't notice if there were any noes.

7 Q. If we can just go through it again.

8 A. I saw all yeses.

9 Q. Remind me the month where -- actually, let's do this first.
10 Can we look at Government Exhibit 235. This is December 2014,
11 right, and same thing, can we just scroll through for yeses and
12 noes.

13 Ms. Bouck, did you see any noes?

14 A. I didn't see any, unless I missing something.

15 Q. Were these reports generated for every month you were at
16 RDC?

17 A. Yes.

18 Q. I think in each of the three months we've looked at, every
19 single order was released; is that right?

20 A. Yes, looks like it, yes.

21 Q. Was that typical for a month?

22 A. Yes.

23 Q. By the way, to do an investigation like the one RDC policy
24 had to release an order, what was required?

25 A. We needed updated dispensing from the pharmacy.

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Bouck - Direct

1 Q. What would you do with that?

2 A. We would analyze it.

3 Q. What was entailed in that?

4 A. We would review it, look at what was being dispensed from
5 the pharmacy for that specific group and then also look at
6 other controlled substance prescriptions being dispensed to see
7 if there was any red flags on them.

8 Q. How long would that whole thing typically take?

9 A. If we had updated dispensing, if it was just a brief
10 review, it would take anywhere from maybe fifteen minutes for a
11 small store that barely dispensed any controlled substance
12 prescriptions. It would take a couple of hours or more for a
13 large store that dispense multiple prescriptions because we
14 would look up information on the prescriber.

15 Q. And were there enough resources in the compliance
16 department to do that for all the orders of interest?

17 A. No, there was not.

18 Q. I want to circle back to your answer about RDC's actual
19 practice. When orders of interest went on hold, were they
20 reported to the DEA?

21 A. No, they were not.

22 Q. And how many orders of interest were -- I'm sorry, how many
23 suspicious orders were reported to the DEA while you were there
24 from 2013 through the end of 2016?

25 A. Actual specific orders that were orders of interest, I do

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Bouck - Direct

1 not remember any suspicious orders being reported.

2 Q. Do you remember reporting any customers?

3 A. I have a recollection of at least one customer during my
4 time there.

5 Q. Why didn't RDC -- were there more than one customer to
6 report to the DEA?

7 A. No, there was more -- let me answer your question. Yes,
8 there was more than one customer.

9 Q. And why didn't RDC report the customers?

10 A. Because it was our practice, we didn't report our
11 customers. We worked with our customers.

12 Q. Was that written down on any policy that RDC didn't report
13 customers or orders?

14 A. Not on any policy I had seen.

15 Q. How did you know then that RDC wasn't supposed to or RDC
16 did not report customers or orders?

17 A. Because it was something I was told.

18 Q. Who told you that?

19 A. Bill Pietruszewski.

20 Q. Do you have any understanding of where, if anywhere, that
21 practice came from?

22 A. My only understanding, it was what he was told.

23 Q. What did you understand he was told?

24 A. What did I understand?

25 MR. TOWNSEND: Objection.

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Bouck - Direct

1 THE COURT: I will allow it subject to connection.

2 Q. What did you understand that Bill Pietruszewski was told?

3 A. My understanding was that -- we were told as a business, we
4 made a business decision to work with our customers and to
5 teach them due diligence practices.

6 Q. And not report them?

7 A. Correct.

8 Q. Who said that?

9 A. That would have come from Larry Doud.

10 Q. Could we please see Government Exhibit 52. Ms. Bouck, this
11 is for everyone. I want to focus on the email at the bottom of
12 the first page. Can you tell the jury who the email is from
13 and to?

14 A. The email is from myself to Elizabeth Cullen, the remainder
15 of the compliance department and Richie Cullen who is on our
16 sales team.

17 Q. Can you read, we already know, to the end of the email?

18 A. Certainly. It reads: We already know that we don't like
19 their dispensing at all, and they haven't incorporated Juice's
20 direction into their daily practices and continue to fill for
21 cash and doctors who are suspicious and have been warned
22 against. My thoughts are, turn them in and turn them off.

23 Q. Who are you talking about in this email?

24 A. I was talking about the Chemist Shop, one of our customers.

25 Q. When you say, we don't like their dispensing, what did you

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Bouck - Direct

1 mean?

2 A. I meant that there was activity present or that
3 demonstrated on their dispensing reports that was concerning
4 because of red flags.

5 Q. You say they haven't incorporated Juice's direction, who is
6 Juice and what are you referring?

7 A. That was Julius Morton. He was one of our compliance
8 auditors, and Julius had visited the store and provided them
9 with due diligence material and information, even verbally, as
10 to what their obligation was as a pharmacy and their
11 corresponding responsibility as a pharmacy to make sure they
12 were dispensing legitimate prescriptions.

13 Q. You say that Chemist Shop continues to fill for cash and
14 doctors that are suspicious, why was that an issue?

15 A. That those were red flags, that we had determined red
16 flags.

17 Q. When you wrote, "Turn them in and turn them off," what were
18 you referring to?

19 A. I was referring to the -- turn off the Chemist Shop's
20 ability to purchase controlled substances from us and to turn
21 them into the DEA.

22 Q. So report them to the DEA?

23 A. Yes.

24 Q. Let's look at the top email in this chain. Who is it from
25 and to?

M1JBDOU5

Bouck - Direct

1 A. It is from Bill Pietruszewski to Julius Morton, myself and
2 Richie Culled is CCd.

3 Q. Now, Pietruszewski writes in the second sentence, this has
4 ran its course and this must be decided by management on how we
5 proceed. What did you understand him to be referring to?

6 A. We needed management -- I'm sorry. I apologize. My tongue
7 is -- we needed management's approval to make any or take any
8 actions of termination against the Chemist Shop.

9 Q. Can you read the next part of the paragraph after that?

10 A. It reads: Though we do not turn in a store unless we can
11 see that they are dispensing to people that are diverting these
12 controlled substances. You do not know this for a fact, so
13 please do not say this loosely.

14 Again, if they were filling illegal prescriptions or
15 mailing to Florida, then we would turn them off and report them
16 to the DEA. If you are to report someone to the DEA due to the
17 high cash, you would have to follow that for all our customers.
18 But we choose as an independent wholesaler to educate and work
19 with our customers. This is what RDC is all about and I know
20 you know that.

21 Q. What did you understand him to be saying?

22 A. That we didn't turn in our customers unless we saw that
23 they were filling illegal prescriptions, that we worked with
24 our customers. We didn't just turn them in because they had a
25 red flag on their dispensing.

M1JBDOU5

Bouck - Direct

1 Q. And was Pietruszewski's statement consistent with RDC's
2 written policy?

3 A. No, it was not.

4 Q. Why not?

5 A. Because our written policy was that if we identified
6 suspicious activity, suspicious ordering, that we would report
7 the customers to the DEA.

8 Q. He says, If you are to report someone to the DEA due to
9 high cash, you would have to follow that for all our customers.
10 Were there other RDC customers with high cash?

11 A. Yes.

12 Q. And were you reporting them to the DEA?

13 A. No, we were not.

14 Q. He ends by saying, We should turn them off, but we need to
15 let Larry and Joe know. Who do you understand Larry and Joe to
16 be?

17 A. Larry Doud and Joe Brennan.

18 Q. Now, this email is from September of 2015, do you know if
19 RDC ultimately terminated the Chemist Shop?

20 A. To the best of my recollection, we did within a couple of
21 months later, or something along those lines.

22 MR. GOTTLIEB: Your Honor, I'm sorry. I couldn't hear
23 the last part.

24 THE WITNESS: I'm sorry. I couldn't hear you.

25 Q. He couldn't hear you.

M1JBDOU5

Bouck - Direct

1 A. Sorry. Yes, we did end up suspending or terminating them
2 within a couple of months from then.

3 Q. Do you know if you continued to sell controlled substances
4 between this time and that time?

5 A. I can't recall that did.

6 Q. Did RDC ever report the Chemist Shop to the DEA?

7 A. No to my recollection, no.

8 Q. And did it ever report any of the chemist shops orders?

9 A. Not at this time, not that I remember.

10 Q. Were there other times that someone at RDC told you that
11 RDC did not report customers that worked with them?

12 A. Yes.

13 Q. What comes to mind?

14 A. A conference, DEA conference that I had attended with
15 Elizabeth Cullen and Bill Pietruszewski.

16 Q. And what do you recall from that conference?

17 A. We had just completed the session. I think it was
18 lunchtime or a break and the session was about -- for
19 manufacturers and distributors, telling us about our obligation
20 to report customers or suspicious activity because it actually
21 helps to prevent things like the opioid epidemic. It helped to
22 prevent diversion, for the DEA to investigate these actions.

23 And I had looked at Bill and told him we needed to
24 start -- this isn't verbatim. I apologize. My memory just --
25 I can't be exact. But I looked at Bill and I had told him that

M1JBDOU5

Bouck - Direct

1 we needed to start reporting our customers, that we weren't
2 doing what the session just told us to do. And Bill had looked
3 at me and said, well, we did report like cases, Prescription
4 Pad, he gave me an example of a customer he reported.

5 But I told him, we weren't reporting other customers
6 and we were not reporting ordering like we were supposed to be.
7 And he said to me that we don't report our customers. We work
8 with our customers and we teach them about due diligence.

9 Q. And what was your reaction to that?

10 A. It upset me because we just were listening. This is where
11 I get upset. We were just listening to the DEA telling us we
12 had to -- I'm sorry.

13 Q. There are tissues there if you need it. We can take a
14 minute.

15 A. I'm fine. I'm sorry. It just upsets me.

16 Q. What about it upset you?

17 A. Because it wasn't right. We were -- the DEA was very --
18 it's not an option. It was very much a regulation that we had
19 to be reporting customers and reporting suspicious activity
20 because it was something real that was happening with opioids
21 and it upset me that we weren't doing that.

22 Q. What's your understanding about who came up with that rule
23 that RDC wouldn't report orders?

24 A. My understanding was that that was upper-management's rule.

25 Q. And who are you referring?

M1JBDOU5

Bouck - Direct

1 A. Larry Doud.

2 Q. Given his involvement in the company, do you think it's
3 possible that Doud didn't know that you weren't reporting
4 orders?

5 MR. TOWNSEND: Objection.

6 THE COURT: Sustained as to the form of the question.

7 Q. What's your understanding about whether or not Doud knew
8 about the reporting?

9 A. What is my understanding of what he knew about it?

10 Q. Yes.

11 A. I understood that he knew what we were doing with customers
12 because ultimately it was him who decided any actions that we
13 took upon our customers.

14 Q. Including reporting them?

15 A. Yes.

16 Q. Did you ever talk to Doud about releasing held orders?

17 A. There was times that he would ask me why a order was held
18 or tell me that an order wasn't held and that we needed to
19 release it.

20 Q. Those times you're thinking of, where were you physically?

21 A. Physically it was possibly in his office or there was times
22 it was in my office.

23 Q. And recognizing there's a few different times, can you
24 describe generally sort of what would happen with the
25 interactions?

M1JBDOU5

Bouck - Direct

1 A. What I remember is that he would ask me about an order
2 being held. He usually had been contacted, from what I
3 remember, by the customer, the customer complaining, and that
4 he would want the order to be released for the customer. And
5 that if there was something we needed, that he would make sure
6 that we got it.

7 Q. Why were those orders on hold?

8 A. A order would have been on a hold because it exceeded their
9 order amount for the month.

10 Q. What happened after Doud spoke to you about the orders?

11 A. It would have been released.

12 Q. Do you recall ever speaking to anyone about Doud telling
13 you to release the orders?

14 A. I remember venting to or talking amongst the compliance
15 team about it and complaining about it.

16 Q. What do you recall?

17 A. Just complaining like that they -- we shouldn't have never
18 released the order, that's kind of -- I don't remember specific
19 conversations.

20 Q. Why did you think you never should have released the order?

21 A. What I do remember, it was circumstances where we're
22 waiting for something like dispensing from the store.

23 Q. Did you ever speak to -- based on your general
24 recollection, do you ever speak to anyone outside of compliance
25 about this?

M1JBDOU5

Bouck - Direct

1 A. If I spoke outside of the compliance department, there's
2 times we would have to speak to our credit managers about --
3 cause they were waiting -- sometimes if an order was on hold,
4 there's also making sure it wasn't a credit issue or that they
5 could release the order. So we would tell the credit managers
6 about their customers order being able to be released, meaning
7 they handled the accounting for that customer.

8 Q. And what generally would you have said?

9 A. Just that we were able to release the order. There might
10 have been times -- there was the credit manager across the hall
11 from me. I might have vented to him like I would have vented
12 to my compliance team as well.

13 Q. What sort of things are you referring to?

14 A. Just I might have been frustrated that we had released an
15 order if we didn't have dispensing.

16 Q. And who is that compliance manager? I'm sorry, credit
17 manager?

18 A. That would have been Sam Alaimo.

19 Q. Taking a step back. While you were working in the
20 compliance department from 2013 to the end of 2016, roughly how
21 many orders of interest were flagged and put on hold?

22 A. Thousands would be what I would say.

23 Q. Now, in the binder in front of you is Government Exhibit
24 275. Can we also put this up on the screen, Ms. Drescher.

25 THE COURT: Is that in evidence?

M1JBDOU5

Bouck - Direct

1 MR. ROOS: Yes.

2 Q. What is this? Why don't you flip through it If you need to
3 flip through the binder just so you can familiarize yourself
4 with it.

5 A. It's the -- we kind of looked at one similar earlier. It's
6 the DEA month end order interest suspicious report.

7 Q. Does this one cover a broader period?

8 A. It starts from January of 2012.

9 Q. I think Ms. Drescher might be able to help you.

10 A. I'm going to say, yes, it does because it's lot of pages.
11 January of '12 through January of '17.

12 Q. Let's go back to the first page and zoom in on the very
13 top. This ones says, DEA month end orders of suspicion report.
14 What does that report refer to?

15 A. It printed along with the order of interest report. It was
16 usually the last page for each month, and it was the amount --
17 it would have listed the orders of interest that were reported.

18 Q. Have you looked through this document, this multipage
19 document?

20 A. Yes, I have.

21 Q. Did you see any suspicious orders listed as reported in it?

22 A. I did not.

23 Q. Let's go to the next page. What does this page show?

24 A. That shows the order of interest for the month of January
25 2012 that were generated.

M1JBDOU5

Bouck - Direct

Q. And it's continued on next page.

(Continued to next page)

Mlj3dou6

Bouck - Direct

1 Q. All right. And let's go to the next page. And sorry, one
2 more page. And then what's this one?

3 A. And that is the suspicious order report for February 2012
4 that were reported.

5 Q. So just for everyone's understanding, basically, the way
6 this works is the first page is the suspicious order report
7 list, the next page is the order of interest list for a month.
8 And then, for the next month there is suspicious order report
9 and then order of interest. Is that right?

10 A. Yeah, the order of interest and then the suspicious order
11 report. That's how they would print in sequence.

12 Q. Exhibit 275 is all of the months, just in order; is that
13 right?

14 A. Yes, it look like they are in order -- yes.

15 Q. So, looking through that roughly, how many orders of
16 interest are listed in the binder?

17 A. Thousands. There is a lot per page, and there are a lot of
18 pages. A couple thousand. I don't know.

19 Q. What happened with most of them?

20 A. Most -- they were released.

21 Q. And were there orders during the period from when you
22 started through the end of 2016 that you believed were
23 suspicious, but which weren't reported?

24 A. Yes.

25 Q. And what happened with those orders?

Mlj3dou6

Bouck - Direct

1 A. They were released.

2 Q. Meaning shipped?

3 A. They were shipped, yes.

4 Q. Let's take this down. Let's change topics.

5 Was RDC taking on new customers in 2015?

6 A. Yes.

7 Q. Did you have any concerns about any of those new customers?

8 A. From my recollection, yes.

9 Q. I'd like to direct your attention to Government Exhibit 41
10 which is in evidence. And let's start at the bottom e-mail
11 from February 18, 2015. Maybe a little higher, Ms. Drescher.
12 One -- two more I think. Thank you.

13 And so, Ms. Bouck, I'll have you focus on the bottom
14 e-mail here and we'll flip through the pages so you can see the
15 rest of it. Okay?

16 So for starters, who is the e-mail from and to?

17 A. From myself to Bill Pietruszewski and Julius Morton.

18 Q. Let's the subject line is Parkdale and Franklin Square
19 Pharmacies?

20 A. Yes.

21 Q. What does that refer to?

22 A. Pharmacy names.

23 Q. Let's go to the next page. What are we looking at here?

24 A. We're looking at a spreadsheet of prescribers that were on
25 the dispensing report.

Mlj3dou6

Bouck - Direct

1 Q. So, can you explain to us the color coding?

2 A. Usually it was a practice of ours to any doctor that we
3 wanted to draw attention to, upon the review, or a doctor that
4 we thought was concerning or suspicious, we would highlight
5 them in a color such as yellow.

6 Q. Now let's scroll down through the table. And at the very
7 bottom here, you write the biggest issue with this store --
8 it's up here, sort at the very top of this last page under
9 second sentence.

10 You write the biggest issue with this store, Parkdale
11 Pharmacy, is the amount of cash they do for benzos. Most of
12 the prescribers above were for such.

13 What are you talking about there?

14 A. High cash was a red flag that we would review when we were
15 looking at a dispensing report. So, they had, from what I am
16 what -- from what I had written, they had high cash on their
17 benzo prescriptions, and most of the prescribers wrote for
18 that.

19 Q. And let's look at the e-mail in response to this one. So,
20 if you go up a few pages, Ms. Drescher.

21 Can you read from -- this is from Bill Pietruszewski
22 and can you read from the sentence at the end beginning "man O
23 man"?

24 A. It reads: Man O man, you are keeping Julius busy. That is
25 good, but it seems to be interesting all the new stores we are

Mlj3dou6

Bouck - Direct

1 bringing on have baggage.

2 Q. Remind us, who is Julius?

3 A. He was one of our compliance auditors.

4 Q. By the way, what was Julius' roles -- like, what does a
5 compliance auditor mean?

6 A. Julius was, or compliance auditor was, their job was to go
7 to the stores, to visit the stores, to see if they were in
8 compliance, or to, they would review their pharmacy records,
9 they would look at their inventory, make sure things were in
10 compliance with regulations.

11 Q. And did Morton visit every pharmacy between 2013 and 2016?

12 A. He did not.

13 Q. Roughly how many?

14 A. I -- maybe half. I am inclined to say less than that. But
15 maybe half.

16 Q. And did he come into the office?

17 A. Very rarely.

18 Q. What, if any, issues were there with Morton's review of
19 pharmacies?

20 A. I don't know necessarily what issues there were. There
21 were times where I may have disagreed with his analysis for
22 review of a pharmacy.

23 Q. What do you mean by that?

24 A. Julius was from the DEA, and he would look at the
25 regulations that were actually in the -- in the CFR, but he had

Mlj3dou6

Bouck - Direct

1 never had any pharmaceutical background. Where I came from
2 having worked in a pharmacy for 15 years or more. And I knew
3 the practices of what happened when you filled a prescription,
4 what you looked at and what you did. And there were times I
5 would notice things happening on the dispensing patterns that I
6 would notice on the dispensing, whether it be the physician and
7 what they were writing for or how it was paid, that it wasn't
8 necessarily a DEA regulation. So there were times where I
9 didn't, I thought there was something wrong, and Julius,
10 because it wasn't black and white, thought there wasn't.

11 Q. Let's go back to the e-mail then. Actually stay on that
12 zoomed, on the highlighted portion.

13 The end of the sentence you read said: Seems to be
14 interesting all the new stores we are bringing on have baggage.

15 What do you understand that to be a reference to?

16 A. That we had seen issues or red flags on their dispensing.

17 Q. Let's go up to the next e-mail. And can you read the first
18 paragraph from Julius Morton.

19 A. It reads: Funny you say that. One of the part owners of
20 Colony Drugs was present at my review today. His name is Roman
21 and he owns a pharmacy we supply in Yonkers. He made a
22 statement that bothered me. He claimed that everyone is being
23 cut off by Cardinal, McKesson and Bellco, and running over to
24 RDC. He almost suggested like we are picking up rejects from
25 other distributors.

Mlj3dou6

Bouck - Direct

1 Q. What do you understand that to refer to?

2 A. That Julius got the impression that other pharmacies and
3 new pharmacies thought that RDC was picking up customers who
4 had been cut off or terminated by other distributors.

5 Q. Let's look at the top e-mail. Can you read the first two
6 sentences.

7 A. Just reading which ones -- where you've highlighted?

8 Q. Yeah. I guess that's technically three sentences.

9 A. I said: Thank you, Juice and Bill. I find myself
10 literally cringing when we have new accounts now because of how
11 the dispensing has looked. Brand new stores are amazing.

12 Q. What did you mean by that, what did you mean literally
13 cringing when we have new accounts?

14 A. Because there was -- I would have meant that there was
15 issues with them, that I was cringing because I knew that there
16 was going to be problems on dispensing reports, problems
17 meaning red flags on the dispensing report when we took on new
18 customers.

19 Q. And were there ever times when Doud told you to turn on a
20 customer with red flags in the dispensing?

21 A. To the best of my recollection, and what I reviewed, I
22 believe there was.

23 Q. Let me ask you, do you recall a pharmacy called Cooke's
24 Pharmacy?

25 A. I do.

Mlj3dou6

Bouck - Direct

1 Q. What do you recall about Cooke's Pharmacy?

2 A. Cooke's Pharmacy was in Pennsylvania. And they had, they
3 had high cash and they had a lot of patients traveling from out
4 of state or that the prescribers, excuse me, were from out of
5 state that were having their prescriptions filled at the
6 pharmacy as high cash.

7 Q. When you first got information about Cooke's Pharmacy, did
8 you turn the pharmacy on?

9 A. No.

10 Q. Why not?

11 A. Because of the -- because of the red flags that were
12 demonstrated on their dispensing report.

13 MR. ROOS: Can we please see Government Exhibit 22
14 which is in evidence. Let's zoom in on the bottom e-mail from
15 Elizabeth Cullen.

16 Q. Would you read it.

17 A. It reads: Hi all. Attached is the dispensing analysis for
18 Cooke's Pharmacy in Troy, Pennsylvania, account number 3744.
19 Their cash percentage is at 27 percent, which is actually down
20 6 percent from the last analysis in March -- specifically their
21 cash for oxy has been reduced to 19 percent from the previous
22 25 percent. Technically this is progress I suppose, but still
23 not great at all. The doctors with the most cash prescriptions
24 to their name are Kari Wood (48), Richard Husband (53), Anika
25 Webb (58), and Stephen Renzi (112). Dr. Constant Sweet, a

Mlj3dou6

Bouck - Direct

1 suspicious prescriber on our watch list is listed here as well,
2 but since I last researched her information, both her PA
3 license and DEA registration have been reinstated to
4 unrestricted status.

5 As for the other prescribers there are seven doctors
6 which are over 50 miles away, including one in Pensacola,
7 Florida. Three prescribers have inactive licenses, five use
8 the DEA number for the Packer Hospital Pharmacy, and seven more
9 either didn't provide a correct verifiable DEA number or didn't
10 provide one at all. Please let me know if you have any
11 questions.

12 Q. Just breaking this down a little bit. For starters, there
13 is a reference to the last analysis in March. Right?

14 A. Yes.

15 Q. What's that a reference to?

16 A. That they had reduced their cash percentage that they were
17 filling prescriptions for from the March dispensing.

18 Q. And it says the cash percentage is at 27 percent which is
19 down 6 percent. And then also notes the oxy percentage.

20 What was the threshold at RDC for what you deemed a
21 suspicious cash amount?

22 A. We tried to look at anything over 10 percent.

23 Q. There is a series of doctors names listed here and a
24 reference to a watch list. What is that a reference to?

25 A. We had a watch list that we -- that was provided to us for

Mlj3dou6

Bouck - Direct

1 doctors to keep an eye on, to watch for suspicious activity.

2 Q. There is a reference to seven doctors which are over 50
3 miles away, including one in Pensacola, Florida. Why, if at
4 all, was that an issue?

5 A. Because it was a red flag that patients would generally, if
6 the doctor was that far away, so was the patient. So, for
7 patients to be traveling that far to have a prescription filled
8 in a pharmacy from a different state, or even the same state
9 but to travel that far to fill a prescription.

10 Q. Let's look at the e-mail in response. The one from Julius
11 Morton there. And he says: Have we ever placed limits on this
12 account from before? Specifically since the March analysis?

13 Do you see that?

14 A. I do.

15 Q. What was your response?

16 A. My response was that we had never turned them on for
17 controls.

18 Q. Then what do you say in the next sentence?

19 A. I said: This is a stockholder Larry would like on for such
20 and says that they are central to a large construction area and
21 get a lot of out-of-town doctors and patients as construction
22 workers.

23 Q. What were you referring to when you said Larry would like
24 it "on" for such?

25 A. That he would want them, he wanted them turned on for their

Mlj3dou6

Bouck - Direct

1 ability to purchase controlled substances.

2 Q. How did you know that?

3 A. Because he told me.

4 Q. Let me ask, actually, you said they had never been turned
5 on for controls. What did you mean by that?

6 A. Meaning prior to this e-mail, we had not allowed them to
7 purchase controlled substances from RDC.

8 Q. Why not?

9 A. Because of the behavior we saw in the earlier analysis in
10 March.

11 Q. Let's look at the e-mail in response to this. And can you
12 read it?

13 A. It is from Julius to myself, and he says: OK, go ahead and
14 turn them on.

15 Q. Was the pharmacy turned on?

16 A. Yes.

17 Q. What ended up happening with the pharmacy?

18 A. If I recall correctly, they ended up being suspended or
19 terminated down the road.

20 Q. When was that?

21 A. I don't remember. I believe it was in 2018, but I can't
22 remember exactly.

23 Q. Was it while Larry Doud was at the company or not?

24 A. No, he was not.

25 Q. What do you recall the reason was it was shut down?

Mlj3dou6

Bouck - Direct

1 A. The same types of behavior. The doctors from the far
2 distances and the cash prescriptions.

3 Q. Did RDC have a policy in place for selling controlled
4 substances to new customers?

5 A. We did.

6 Q. Let's start by looking back at Government Exhibit 29 which
7 we looked at previously. We turn to the second page.

8 What does it say will happen before selling controlled
9 substances to new customers? It is the second paragraph here.

10 A. It states that RDC would require certain documentation from
11 the store before the account is set up. That we required an
12 account questionnaire, pictures inside and outside of the
13 store, along -- we wanted copies of their DEA registration
14 certificate and their state licenses, the salesman was supposed
15 to inspect the store do kind of a review of the store. And we
16 would require a controlled substance report for the most recent
17 three months from the pharmacy.

18 Q. It says so we can examine if any risk. What did that mean?

19 A. It meant so we could make sure that not only the pharmacy
20 itself, the licenses, and DEA registration were accurate and
21 that they were active. But also that there wasn't any red flag
22 activity within the dispensing report.

23 Q. Let's look again at the policy from 2015, Government
24 Exhibit 276. Can we look under the heading customer due
25 diligence and have you read the first paragraph.

Mlj3dou6

Bouck - Direct

1 A. It reads: RDC must obtain certain information about every
2 prospective and current customer and their business;
3 investigate the customer and review documentation and
4 information it gathers to assist it in determining whether the
5 customer is ordering controlled substances for legitimate
6 medical purposes.

7 Q. Let's go to the next page. And do you see where it says
8 prior to selling controlled substances to any account, RDC must
9 obtain, review and verify the following?

10 A. Yes.

11 Q. What are the things that RDC must obtain, review and
12 verify?

13 A. The customer's DEA registration, their state professional
14 license, the actual pharmacist license, any of the pharmacists
15 that work there. Some states required a pharmacy to have a
16 controlled substance license, so we would require that from
17 them, as well. The customer application, questionnaire and
18 photographs, a completed visit protocol, and drug dispensing
19 information along with any additional information we felt we
20 needed.

21 Q. Let's go to the next page. Under subheading (h), what's
22 this?

23 A. It was talking about what we could do with -- with
24 controlled substance dispensing data, in that we would review
25 it for red flags, for completeness, accuracy and areas of

Mlj3dou6

Bouck - Direct

1 potential concern.

2 Q. Did RDC always follow that policy?

3 A. No, we did not.

4 Q. Were there ever times that Doud told you to open an account
5 before reviewing the dispensing?

6 A. Yes.

7 Q. Can we please show the witness and the jury what's in
8 evidence as Government Exhibit 111B. Let's go to the bottom of
9 the second page.

10 Can you read the e-mail you wrote on October 15?

11 A. Yes. It says: Kevin, inquiring as to the status of the
12 rest of the required information, etc. needed from compliance
13 for this account? We are still in need for the customer
14 questionnaire, visit protocol, dispensing with all required
15 fields on all controlled substances. Please let me know if you
16 have any questions. Currently per Larry's direction, this
17 account is on for controlled substance purchasing -- or CS,
18 controlled substance purchasing, but I am to follow up to make
19 sure we receive required info. Thank you, Jessica.

20 Q. And what's the subject line?

21 A. Blairsville.

22 Q. What's that a reference to?

23 A. A pharmacy.

24 Q. Is that a new customer at the time or potential new
25 customer?

Mlj3dou6

Bouck - Direct

1 A. Yes.

2 Q. And the first sentence you are asking about some materials.
3 Why were you asking for those?

4 A. Because those were required for us to be able to review to
5 make sure that it was a legitimate pharmacy and the dispensing
6 was.

7 Q. Under the policy?

8 A. Yes.

9 Q. The last sentence here says: Currently per Larry's
10 direction this account is on for CS purchasing -- I'll get to
11 the rest of the sentence in a second. Let me stop there.

12 What is CS purchasing a reference to?

13 A. Controlled substance purchasing.

14 Q. And when you said the account is on, what do you mean?

15 A. That we had turned on their ability to order controlled
16 substances from us.

17 Q. What are you referencing when you say per Larry's
18 direction?

19 A. That Larry -- he is the one that wanted or told me to turn
20 them on.

21 Q. Now, did RDC sell controlled substances before doing
22 dispensing analysis to this customer?

23 A. Yes.

24 Q. Was there ever a time when Doud wanted to change RDC's
25 practice with respect to all new customers?

Mlj3dou6

Bouck - Direct

1 A. Yes.

2 Q. What happened?

3 A. He had read somewhere that the DEA was loosening up on its
4 review or visits to manufacturers and distributors, that he --

5 MR. TOWNSEND: Your Honor, I object.

6 MR. ROOS: What's the objection?

7 MR. TOWNSEND: She's testifying as to what Larry Doud
8 read?

9 THE COURT: Why don't you make clear as to how she has
10 this, come about this information.

11 MR. ROOS: Sure.

12 Q. Ms. Bouck, how do you know about this?

13 A. Because it was a conversation and an e-mail that myself was
14 included to that Larry had learned or he understood that there
15 was -- basically, in so many words or less, he wanted us to
16 start turning on customers without analyzing dispensing
17 reports, because he thought that that was something we could do
18 afterward, because the DEA wasn't coming down as hard on
19 distributors, and this would expedite the process of turning on
20 new customers.

21 Q. What reason, if any, did he give for why he wanted to start
22 opening accounts before doing due diligence?

23 A. Because he thought that this -- because this gave us the
24 opportunity to do so. To turn on customers faster.

25 Q. I'm sorry. What gave you the opportunity to do so?

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Bouck - Direct

1 A. The -- the article that was read, that he had read.

2 Q. So the fact that he DEA was not going into companies?

3 A. Correct.

4 Q. Can we please see Government Exhibit 57. Can we turn to
5 the second page and start at the bottom.

6 Who is this e-mail from?

7 A. From Larry Doud.

8 Q. Can you read it.

9 A. Yes. It reads: Folks, based on recent government changed
10 I want to accelerate our account opening process. As soon as
11 our credit managers completely approve our credit app, we will
12 open an account right away. We will continue to do our
13 diligence on controls, but not before we open the account.
14 It's open for discussion.

15 Q. What did you understand him to be referring to?

16 A. That he wanted accounts being turned on as soon as it was
17 approved by the credit department.

18 Q. Can you read Bill Pietruszewski -- read the next e-mail,
19 the one above it from Bill Pietruszewski.

20 A. It reads: Hi Larry. That is a management decision and is
21 fine with compliance. I only would suggest that Don Bilgore or
22 Larry Houck change our SOP to state so we made a change.

23 Q. What is SOP?

24 A. Our suspicious ordering procedures.

25 Q. Who are Bilgore and Larry Houck?

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Bouck - Direct

1 A. They are attorneys.

2 Q. And what did you understand him to be referring to when he
3 said change our SOP?

4 A. I understood that to incorporate the turning on of stores
5 once the credit manager approved them for controlled
6 substances.

7 Q. Let's turn to the first page of the document. There is an
8 e-mail from Bill Pietruszewski at 9:08 a.m. on June 6. Can you
9 read first who it's to?

10 A. It is from Bill Pietruszewski to Larry Doud, and cc'd are
11 Joe Brennan, myself, Richie Cullen, Jay Shearer, Lanny Doud and
12 Bill again.

13 Q. By the way, who are Jay Shearer and Lanny Doud?

14 A. They were part of our sales management team.

15 Q. Is Lanny Doud related to Larry Doud?

16 A. Yes.

17 Q. What's the relation?

18 A. He is his son.

19 Q. Can you read what he wrote in the body of the e-mail.

20 A. Bill wrote: The SOP just states that RDC will conduct a
21 review prior to opening them to controls. We would just need
22 to change this, but would ask that the attorneys would do so.
23 Jessica and all compliance team must send their analysis to
24 Julius and myself and we then normally give our pleasing to
25 turn on. As I said this morning, we have no problem changing

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Bouck - Direct

1 that, just want it to be documented so we may show DEA when
2 they are in the next time for an audit.

3 Q. What did you understand that to mean?

4 A. That Bill wanted to make sure that our SOP reflected this
5 change in how we turned on new customers for controlled
6 substances.

7 Q. Why is that?

8 A. Because it would have been different, we were turning them
9 on without an analysis, where the SOP stated that we would
10 review and do an analysis of the customer's dispensing so they
11 matched.

12 Q. What was your understanding of why it mattered that they
13 match?

14 A. Because we wanted to make sure the DEA knew what we were
15 doing, and what was written was what we were practicing.

16 Q. The e-mail above this is from you. Can you explain what
17 you were asking?

18 A. My concern with just turning on the customer as soon as the
19 credit manager approved them was that it -- I wanted to make
20 sure, I was concerned we wouldn't get their license and
21 registration and pictures, so we could verify they are an
22 actual pharmacy. So I was asking that we could at least get
23 their questionnaire and pictures as part of the credit process,
24 so we could at least have some form of verification done.

25 Q. Let's look at the top e-mail. Who is that one from?

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Bouck - Direct

1 A. That is from Larry Doud to myself with others cc'd.

2 Q. How did he respond?

3 A. He said: We do not do that through the credit app? I do
4 not want to slow this down.

5 Q. So did RDC start opening new accounts without doing due
6 diligence?

7 A. We did.

8 Q. And were you reviewing dispensing data before selling
9 controlled substances?

10 A. No, we were not.

11 Q. So was there any type of due diligence before selling
12 controlled substances?

13 A. If we, the only due diligence would have been if we
14 actually did receive a questionnaire or a DEA license or
15 registration verifying them, that would have been it. We
16 didn't know anything with the dispensing.

17 Q. Were there any sort of controls to deal with the diversion
18 relating to those sales?

19 A. No, because we were not reviewing what was happening in the
20 dispensing data.

21 Q. There is a reference in the e-mail to attorneys editing.
22 Did they have do that, to your knowledge?

23 A. Not that I am aware.

24 Q. Did Larry Doud ever speak to you directly about opening
25 accounts?

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Bouck - Direct

1 A. Yes.

2 Q. What happened?

3 A. Just that he -- maybe he would have been something along
4 the lines of this is a new account, that so-and-so is a new
5 account, and we want this store as one of our customers, and
6 that as soon as we got approval from credit, that he wanted
7 them turned on for controlled substances.

8 Q. How did you react?

9 A. I would have turned them on. I may not have liked it, but
10 I would have turned them on. He was the boss.

11 Q. Can we now pull up Government Exhibit 1004 just for the
12 parties and the Court. Not the witness.

13 MR. ROOS: The government would now offer this
14 stipulation.

15 THE COURT: Yes.

16 MR. TOWNSEND: No objection.

17 MR. ROOS: I misidentified. It is 1005. So the
18 government offers Exhibit 1005 and also the materials
19 referenced therein which are Government Exhibits 501 and 502.

20 THE COURT: Received. The stipulation is not already
21 in evidence?

22 MR. ROOS: The stipulation is not already in evidence.
23 And so I'm offering the stipulation and I'm offering the two
24 exhibits referenced in the stipulation.

25 THE COURT: Without objection they'll be admitted.

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Bouck - Direct

1 (Government's Exhibit 1005, 501, 502 received in
2 evidence)

3 MR. ROOS: Can we publish that for the jury?

4 THE COURT: Yes.

5 MR. ROOS: I'll read just part of it.

6 It is hereby stipulated and agreed amongst the parties
7 that if called as a witness, a representative of the United
8 States Attorney's Office from the Southern District of New York
9 would testify that Government Exhibit 501 is a true -- 502, I'm
10 sorry -- is a true and accurate copy of data extracted on or
11 about February 21, 2019, from an iPhone 5S possessed by William
12 Pietruszewski.

13 Government Exhibit 502 consists of a voicemail from
14 Pietruszewski's iPhone dated June 7, 2016.

15 Ms. Drescher, can we now play that voicemail for
16 everyone.

17 (Audio recording playing)

18 MR. ROOS: Can we now please show just for the witness
19 and the parties Government Exhibit 502T.

20 Q. Ms. Bouck, take a look, and the question is, is this an
21 accurate transcript of your voicemail?

22 A. Yes, it is.

23 MR. ROOS: The government offers Exhibit 502T.

24 THE COURT: Any objection?

25 MR. TOWNSEND: No objection.

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Bouck - Direct

1 THE COURT: It will be admitted into evidence.

2 (Government's Exhibit 502T received in evidence)

3 MR. ROOS: Can we publish it?

4 THE COURT: Yes.

5 Q. Ms. Bouck, twice in the voicemail you say -- you first say
6 I don't want Larry thinking I am being obstinate and not
7 following rules. And then in line 23-24 you say, like I said,
8 I didn't want Larry thinking I am being obstinate and not
9 following rules.

10 What did you mean by that?

11 A. Well, Larry was the big boss. He ultimately, he was the
12 boss of my boss. And I didn't want to disobey, or not listen
13 to what he had asked me to do.

14 Q. And you say following rules, now you had a written policy
15 relating to opening new accounts, right?

16 A. Yes.

17 Q. And under those rules opening new accounts without due
18 diligence was not something you would do, right?

19 A. Correct.

20 Q. What rules were you talking about?

21 A. The directive that Larry made that he wanted the stores
22 turned on as soon as we got approval from the credit manager.

23 Q. Why were you worried about not following those rules?

24 A. Because I didn't want to lose my job.

25 Q. What happened with those accounts that were opened without

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Bouck - Direct

1 any due diligence?

2 A. Some of them remained on, and some of them ended up
3 ultimately being suspended or terminated.

4 Q. When did that suspension or termination happen?

5 A. From my best recollection, it didn't happen until some time
6 in 2017-2018.

7 Q. Was Larry Doud at the company at that point?

8 A. I don't believe he was anymore.

9 Q. Let's look at one pharmacy in particular. Are you familiar
10 with a pharmacy called 59th Street?

11 A. It's familiar, yes.

12 Q. Is that a pharmacy that sold controlled substances without
13 a full review of dispensing?

14 A. To the best of my recollection, yes.

15 Q. Let's take a look at Government Exhibit 23, please. Let's
16 start at the bottom. This e-mail is from March 2017. Was the
17 59th open in 2016?

18 A. I believe so, yes.

19 Q. And what is this at the bottom here?

20 A. This is a dispensing analysis.

21 Q. And did this happen before, after, or at the same time that
22 the pharmacy was turned on for controlled substances?

23 A. I believe that this analysis was done after they were
24 turned on for controlled substances.

25 Q. And so, in this bottom e-mail it is from Elizabeth Cullen

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Bouck - Direct

1 to compliance. Is that a group that included you?

2 A. Yes.

3 Q. What's the subject?

4 A. 59th Street Pharmacy dispensing analysis, account number
5 6508, Brooklyn, New York.

6 Q. Do you see the sentence that begins: Here are the
7 prescribers of note for this store in particular?

8 A. Yes.

9 Q. Can you read the bullets after that.

10 A. Yes.

11 Wei Wang, family medicine, cocktail prescribing.

12 Michael Garbulsky, physician assistant, cocktail
13 prescribing.

14 Carl Anderson, family medicine, high quantity
15 prescribing. 2RX of 180 count oxy 30milligram. 100 percent
16 insurance. Previously vetted with accounts Southshore/New
17 Dorp/Princess Bay.

18 Q. Can we go to the next page.

19 MR. GOTTLIEB: Your Honor, objection. May we have a
20 sidebar, please? It will be brief, your Honor.

21 THE COURT: Fine.

22 (Continued on next page)

23

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Bouck - Direct

1 (At the sidebar)

2 MR. GOTTLIEB: I just wanted the chronology. Because
3 we are at the point now, your Honor, where this is March of
4 2017. Mr. Doud I believe had already left, so, the objection
5 is that this could not be in furtherance of the conspiracy
6 which would have been the basis to have this admitted.

7 MR. ROOS: It's plainly relevant what happened with
8 the pharmacies.

9 THE COURT: Are these pharmacies that were taken in
10 during the time that he was --

11 MR. ROOS: Correct.

12 THE COURT: -- the CEO?

13 MR. ROOS: If that's part of the issue, I am happy to
14 clean up the record on that.

15 THE COURT: That may solve that issue.

16 MR. GOTTLIEB: No, but they were then, assuming the
17 facts are that they were terminated after he left, that is not
18 relevant because there is so many other factors that may have
19 gone into that.

20 THE COURT: Both of those are relevant. If they
21 weren't, if they were brought in when he was the president and
22 they weren't terminated while he was there and they were
23 terminated afterwards, then the question is was there a
24 legitimate reason he brought them in and didn't terminate
25 before then.

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Bouck - Direct

1 MR. GOTTLIEB: Your Honor, I don't believe this trial
2 is now going to be a trial on what happened later in 2017,
3 2018.

4 THE COURT: No.

5 MR. GOTTLIEB: That would be beyond what we're put on
6 notice of.

7 THE COURT: I'll put it this way. If it can be
8 established that the conditions that existed that resulted in
9 the termination after they left existed at the time that he was
10 there, then it's relevant.

11 MR. ROOS: I'll work to lay that foundation.

12 THE COURT: If they can lay that foundation, otherwise
13 I'll hear you with regard to your objection.

14 MR. GOTTLIEB: Thank you.

15 (Continued on next page)

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Bouck - Direct

1 (In open court)

2 BY MR. ROOS:

3 Q. Ms. Bouck, I want to go back and ask a few questions just
4 to clarify. Was this particular pharmacy, 59th Street, turned
5 on while Larry Doud was at RDC?

6 A. I don't remember what the date was specifically.

7 Q. It was 2016. Was he at RDC then?

8 A. Yes.

9 MR. GOTTLIEB: I would ask that the witness answer the
10 question.

11 THE COURT: Is that an objection?

12 MR. GOTTLIEB: Yes.

13 THE COURT: Leading?

14 MR. GOTTLIEB: Yes.

15 THE COURT: Sustained.

16 Q. When was the pharmacy turned on?

17 A. If I saw the e-mail again I could tell you.

18 Q. Would an e-mail help refresh your recollection?

19 A. Yeah, the document that was just up I think would tell me,
20 at least when or something.

21 MR. ROOS: Just for the parties and the witness.

22 Q. Ms. Bouck, do you see that?

23 A. Yes, I do.

24 Q. Does it refresh your recollection of when the pharmacy was
25 first turned on?

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Bouck - Direct

1 A. Yes.

2 Q. I'll withdraw the document now. Let me ask you the
3 question.

4 What is your recollection of when 59th Street Pharmacy
5 was first turned on?

6 A. In December of 2016.

7 Q. Was Larry Doud at the company at the time?

8 A. Yes, he was.

9 Q. And when was the pharmacy terminated?

10 A. After -- after, some time in, I don't remember exactly
11 when, but it was some time in 2017, after that March 2017
12 analysis.

13 Q. To your recollection, was Larry Doud at the company when
14 the pharmacy was terminated?

15 A. To my recollection, he was -- he was no longer there, no
16 longer actively there. He was out of state.

17 Q. And the issues, let's bring back up Government Exhibit 23.
18 The issues that are identified here, to the best of your
19 recollection, are they new problems to the pharmacy or did
20 these exist when they were opened?

21 A. To my recollection, these existed when they opened.

22 MR. ROOS: So, your Honor, I think the witness was in
23 the middle of reading part of the e-mail.

24 THE COURT: Is this in evidence already?

25 MR. ROOS: It's in evidence.

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Bouck - Direct

1 Q. We were going through these physicians and we were just
2 going to the second page.

3 Could we zoom in on that. And will you pick up by
4 reading Joseph Olivieri?

5 A. Yes. It reads Joseph Olivieri, high quantity prescribing.
6 2RX of 180 count oxy 30 milligram 100 percent insurance.
7 Previously vetted with multiple accounts, including Bay Ridge
8 3850.

9 Barry Savits, general surgery, high cash, 3RX
10 67 percent cash for oxy/Apap 10-325.

11 Anthony Pietropinto, psychiatry. High cash. 2RX
12 50 percent cash for oxy 30 milligram, 31 percent cash for
13 overall prescriptions, 5 out of 16 total RX.

14 David Taylor, family medicine/internal med. High
15 quantity prescribing. 3RX of 180 count oxy 30 milligram
16 100 percent insurance. Previously vetted with accounts Old
17 Town Staten Island/Oakhurst/Todt Hill/Victory Randall.

18 David Treatman, family medicine. High quantity
19 prescribing. 2RX of 240 count oxy 30 milligram, 2RX of 180
20 count oxy 30 milligram, 3RX of 180 count oxy 15 milligram,
21 100 percent insurance. Previously vetted with accounts Todt
22 Hill number 6126, Kingsway, Bay Ridge.

23 Martin Tesher, family medicine. High cash. 3RX
24 67 percent cash for oxy 30 milligram, 90 percent cash for
25 overall prescriptions 10 of 11 total RX, previously vetted with

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Bouck - Direct

1 accounts South Shore Pro Health 3934/Todt Hill/Bay Ridge 3580.

2 Emmanuel Lambrakis, general surgery. Arrested 12 of
3 2016. High cash. 4RX 100 percent cash for oxy 30 milligram,
4 4RX 100 percent cash for Opana ER 40 milligram, 100 percent
5 cash on overall prescribing through this store, 12 total RX.

6 Please let me know if there is any questions.

7 Q. All right. Back on the first page, there was a physician
8 named Carl Anderson. Are you familiar with that physician?

9 A. His -- he is a very, that name is very familiar to me.

10 Q. Why is that?

11 A. Because I believe he was, from what I remember, he's one of
12 our doctors we flagged as suspicious.

13 Q. The reference here where it says previously vetted with
14 account South Shore, New Dorp, Princess Bay, what's that a
15 reference to?

16 A. Those were other stores that he -- prescriptions were
17 filled for that he had written for.

18 Q. Let's go to the next page. I'm sorry. The second page of
19 this. And some of these other names, are any of them familiar
20 to you?

21 A. Yes.

22 Q. Which ones?

23 A. Joseph Olivieri, Anthony Pietropinto, David Taylor, Martin
24 Tesher, and Emmanuel Lambrakis.

25 Q. Why were all those names familiar to you?

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Bouck - Direct

1 A. Those were familiar to me because those were doctors that
2 we saw consistently in some of the dispensing reports for our
3 pharmacies we were selling controlled substances to, and they
4 were doctors, to the best of my recollection, that we flagged
5 to either watch as suspicious or they were on a suspicious
6 watch list.

7 Q. On David Taylor, for instance, it says previously vetted
8 with accounts Old Town Staten Island/Oakhurst/Todt Hill,
9 Victory Randall. What's that a reference to?

10 A. Those were other accounts that David Taylor, his
11 prescriptions were being filled within.

12 Q. Were there -- okay. Now, I think you testified, or let me
13 ask, what ultimately happened with this pharmacy, 59th Street?

14 A. They were ultimately suspended or terminated.

15 Q. Were there times that DEA agents would visit RDC and ask
16 about due diligence?

17 A. Yes.

18 Q. And were you ever physically present for one of those
19 visits?

20 A. I was.

21 Q. When was that?

22 A. That was in November of 2016.

23 Q. Did you give them any documents at the time?

24 A. We had provided them with our due diligence documents.

25 Q. Which document was that?

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Bouck - Direct

1 A. To the best of my recollection, it was the January 2015
2 suspicious order monitoring policy document that we looked at
3 earlier.

4 Q. Let's please take a look at Government 67. What's this
5 e-mail?

6 A. This is an e-mail from -- of written by myself from myself
7 to Ed Kirker and Joe Brennan, and it was notes, my DEA audit
8 notes from their visit to our facility in Rochester.

9 Q. Is there an attachment to the e-mail?

10 A. There are attachments.

11 Q. Let's take a look at the attachment.

12 MR. ROOS: So, Ms. Drescher, if you would just flip
13 the page until we get to the attachment.

14 Q. And what is this document?

15 A. That is our RDC's customer due diligence and suspicious
16 order monitoring/reporting policies and procedures.

17 Q. Is this the document that was given to them?

18 A. Yes.

19 Q. This is the same document we looked at earlier, right?

20 A. Correct.

21 Q. And what does it say about due diligence on new accounts?
22 Let's go to the second page.

23 A. Okay. I'm sorry.

24 Q. You don't have to read it. Just describe, since we've
25 already read it, what does it say about due diligence on

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Bouck - Direct

1 selling to new accounts.

2 A. It says prior to selling controlled substances to any
3 customer, that we would obtain, review, and verify here are the
4 list of things, but one of them additionally besides license
5 and registration, additionally was the dispensing data.

6 Q. And was that, when you gave this to the DEA, was it true
7 that you were doing that?

8 A. No, we were not doing that.

9 Q. And why not?

10 A. Because -- because of a directive made prior to that that
11 we would analyze dispensing and review dispensing after turning
12 on a customer for controlled substances.

13 Q. What directive are you referring to?

14 A. A directive from Larry Doud that he wanted accounts turned
15 on as soon as a credit manager approved them.

16 Q. After Larry Doud left the company, did you report
17 suspicious orders?

18 A. We did.

19 Q. And were those suspicious order reportings for new issues
20 with the pharmacies or issues that existed while he was there?

21 A. Both. Some were new issues and some were definitely things
22 that were happening in the past.

23 Q. And to the extent they were customers that were there in
24 the past, were there sort of new issues that had come up or
25 were they the same issue?

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Bouck - Direct

1 A. They were the same issues.

2 Q. I'm showing you what's been marked for identification as
3 Exhibits 263, 264, 265, 266. And there is a Redweld that's up
4 there that has these. I think there -- yes, that's correct.
5 Let me know when you're done looking at them.

6 A. I'm familiar with what they are.

7 Q. Okay. And what are they?

8 A. They are our suspicious order reporting logs.

9 Q. Were these made as a regular part of RDC's compliance
10 function?

11 A. Can you ask that one more time?

12 Q. As a regular part of the practice of RDC's compliance
13 department, did you make these?

14 A. Yes.

15 Q. Did you record each suspicious order report as it was made
16 on these logs?

17 A. Yes, starting sometime in 2017, we started progressively
18 recording and then all the time recording suspicious order
19 activity reporting.

20 MR. ROOS: The government offers 263 to 66.

21 MR. GOTTLIEB: Objection.

22 THE COURT: Let's try to resolve that after we send
23 the jury home. So can we take the break now or do you want to
24 do another area?

25 MR. ROOS: I probably can switch topics and come back

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Bouck - Direct

1 to it tomorrow. If that works for your Honor or we can stop.

2 THE COURT: Why don't we stop. Let the jury go home.

3 Ladies and gentlemen, this is what we're going to do.
4 We are going to adjourn for the day. I'd like to continue
5 tomorrow at 9:45. I understand that the weather may end up
6 being a little treacherous tomorrow. So my main concern is
7 your safety.

8 I am going to ask that you all be back here tomorrow
9 at 9:45, but use your best judgment. Obviously those of you
10 who are in northern counties, as to whether or not you think
11 it's safe to come in. If you determine you make the judgment
12 that it's not safe for you to come in, try to notify us as
13 early as possible. If you just call chambers and leave a
14 message, then I can try to get my law clerks to start calling
15 everybody else, and telling them that you're delayed or you
16 were not able to come in, because we're a team and we can't
17 work unless everybody is here. So, I would remind you of that.
18 I don't want to fall behind for tomorrow. So hopefully, if the
19 weather isn't that bad, we can pick up tomorrow morning and
20 have a full day of tomorrow.

21 But, otherwise, as I say, use your best judgment, your
22 safety is my primary concern. But, if we can all make it
23 tomorrow morning, I'll see you tomorrow morning at 9:45 and
24 please let us know as soon as possible if for some reason
25 you're either delayed or the weather prevents you from

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1 attending tomorrow so I can notify everyone else.

2 All right. So I'll see you tomorrow morning. Don't
3 discuss the case, keep an open mind. We'll start at 9:45.

4 (Jury excused)

5 THE COURT: You can step down.

6 THE WITNESS: Thank you.

7 MR. ROOS: Is it okay if I say one thing to the
8 witness about her travel accommodations?

9 THE COURT: Sure.

10 Let's see if we can quickly address this issue. You
11 had an objection, Mr. Gottlieb.

12 MR. GOTTLIEB: Your Honor, thank you very much. We
13 object to the questioning about after Mr. Doud left, after he
14 retired. Any change in policy, any decisions post 2017, the
15 date that he left, any decisions, any action that was taken by
16 RDC and other individuals is not relevant. The time period in
17 this trial, the indictment is 2012 until I believe January
18 of -- March of 2017. And therefore, that's what we're dealing
19 with. Why people at a later time, that's not relevant, may
20 have taken any action is not relevant. And in fact, creates a
21 real due process problem for us, because then, any decisions
22 that were made by anybody after he left, if that was covered by
23 a trial, then we would have investigated them. We would have
24 gone into things that happened in 2017, 2018. We weren't put
25 on notice that they were going to not only not going to prior

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1 bad acts, but subsequent bad acts. And therefore, your Honor,
2 we are not prepared to address that issue of what happens post
3 the time of the indictment.

4 That lays it out.

5 THE COURT: Before I hear from the government, let me
6 narrow the issue. Obviously, that it is admissible, anything
7 that was occurring during the time Mr. Doud was at the job,
8 that was discovered later. So, if I stole a car a year ago,
9 and they didn't find out until last month, obviously they can
10 testify that they did an investigation and they found that the
11 car was missing and it was in my house.

12 MR. GOTTLIEB: I agree.

13 THE COURT: So let's narrow that issue. To the extent
14 that the witness is going to testify that the subsequent
15 reports were either prepared during that time or there was
16 something that was discovered about that time at a later date,
17 that I think is fair game.

18 But what is the extent of the government's use of
19 subsequent actions by the company after Mr. Doud left?

20 MR. ROOS: It's subsequent reporting and termination
21 by the compliance department at Rochester Drug, the witness is
22 going to testify, she's already said some of this, that there
23 were pharmacies that were either existing customers or new
24 customers during the Larry Doud period that were then
25 terminated and/or reported in the period afterwards. And she

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1 will say it is the same, it was the same concern, she's already
2 said that, and the reason why they started to report afterwards
3 is because she no longer felt like there was someone saying you
4 are not allowed to do this.

5 And besides, I think your Honor already at the sidebar
6 articulated the relevance of that, there is actually authority
7 for that the Second Circuit in United States v. Copper Company,
8 and we are happy to file a brief on this tonight if needed with
9 all the authorities. I'll pass this up to your Honor. This is
10 an antitrust case.

11 The trial court's decision to admit evidence
12 documenting the demise of the conspiracy and the subsequent
13 change in bidding patterns was correct, since post-conspiracy
14 evidence is admissible if it is probative of the existence of
15 the conspiracy. With a long string cite.

16 That's what we have here. The fact they subsequently
17 terminated the customers for what she'll testify were the same
18 exact issues that exist while he was there is probative of the
19 existence of the conspiracy not to report, not to do diligence,
20 to divert controlled substances.

21 THE COURT: The only think I don't hear you saying,
22 and maybe you will be that specific. I don't hear you saying
23 that the specific information that you are relying upon is past
24 information that existed at the time that Mr. Doud was the
25 president of the company. Obviously, if it turns out that some

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1 investigation determined that there was some improper sale in
2 2018, and that was a reason that they terminated the company,
3 that's not particularly relevant for this case, because this
4 does nothing to prove the conspiracy that Mr. Doud was involved
5 in, if the evidence that's being offered is evidence that was
6 created after Mr. Doud left.

7 So, I don't know whether you're in a position to limit
8 that testimony, I don't know whether you are in a position to
9 have your witness make that distinction. But, it doesn't tell
10 me anything that they did a report in 2018 and the report that
11 they did in 2018 resulted in the termination of companies that
12 were doing business pre and up to 2018.

13 Obviously, if they were terminated for reasons that
14 existed in 2018, but did not exist at the time Mr. Doud was the
15 president or CEO of the company, then it's not relevant
16 evidence against Mr. Doud and it is not within the conspiracy.

17 So, I think that you should determine whether or not
18 how specific you can and wish to be with regard to companies
19 that were doing business with Mr. Doud, while Mr. Doud was at
20 the company, and whether or not the reasons for their
21 termination was evidence of their activities during the time
22 that Mr. Doud was at the company.

23 Now, you may be able to, if you can articulate
24 specifically, convince me that there is some other relevance or
25 some other post-2017/18 relevance evidence that's relevant to

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1 this case.

2 But I think the first thing, my reaction is that, yes,
3 you are not limited to evidence that you discovered while
4 Mr. Doud was at the company. But, you may be limited to
5 evidence that may have been discovered later, and was at the
6 company when Mr. Doud was at the company, and resulted in a
7 different application of the regulations by the company once he
8 left.

9 MR. ROOS: Your Honor, I think on that, and your Honor
10 should, with respect to the specific pharmacy, 59th we talked
11 about, so, my understanding is for most all of these pharmacies
12 she will testify that it was nothing new in the pharmacy's
13 conduct. They already had the red flags. It is just they
14 started to report them.

15 Part of this was in interest of trying to expedite
16 this for the jury. If what's necessary is we go down this list
17 before the exhibit's offered, every single pharmacy and ask her
18 the question and then offer it, I think we could do that.

19 THE COURT: No, you don't have to do that. If you are
20 in a position to demonstrate that, and the defense has prior
21 notice of it, and they have no legitimate basis to object. So
22 you don't have to waste the jury's time. You can waste the
23 lawyers' time.

24 MR. ROOS: I hear your Honor saying I think on this
25 particular relevance point, I think I certainly can lay some

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1 more foundational questions about the suspicious order report
2 lists and the termination lists before offering it to match up
3 these pharmacies and the conduct that was going on when they
4 were terminated with what was going on during the period that
5 Doud was at the company.

6 MR. GOTTLIEB: Your Honor, just if I can highlight the
7 problem. And perhaps we can pick this up once they have an
8 opportunity to really get the facts.

9 We know from the evidence, both from the government's
10 direct and cross, that if there is a red flag, the obligation
11 is to investigate. It doesn't mean you have to terminate. It
12 doesn't mean you have to file a suspicious order. That's what
13 we've learned already in this trial. So, if while Mr. Doud is
14 there, there is a red flag, and they investigate and they
15 decide to continue, the fact that at a subsequent date, after
16 he leaves, there is a red flag, another red flag, and somebody
17 else, another group, no connection to Mr. Doud, the only
18 connection being that that pharmacy existed when he was there,
19 that would not be probative of any of the issues involving
20 Mr. Doud.

21 THE COURT: Except that if there were red flags that
22 Mr. Doud and/or the compliance department knew about while he
23 was there, and that red flag would have and should have
24 prompted them to take action to either further investigate,
25 and/or terminate, the jury is entitled to know that. And so,

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1 if there was a red flag or suspicious activity, and nothing was
2 done about it, it's the jury's determination as to whether or
3 not it was appropriate for him to do nothing about it or he
4 should have terminated.

5 Now, I'll hear you and I'll let you talk. But I only
6 hear you arguing about whether or not the ultimate
7 determination to terminate those companies later, I don't hear
8 you making an argument that any information that was available
9 and any red flags that were available at the time Mr. Doud was
10 there, I don't hear you arguing that that can't be brought out
11 by the witness, even if it was discovered later on, in a more
12 thorough investigation. Which is the government's argument,
13 that a more thorough investigation was what was required, and
14 that sticking one's head in the sand and allowing these
15 companies to go about their business.

16 So the question is, I'm not sure what else you are,
17 other than evidence of red flags that existed after he left,
18 that didn't exist before he left, I don't know what else you're
19 arguing about, other than the final determination that was made
20 by the company afterwards, to terminate those companies based
21 on those red flags.

22 MR. GOTTLIEB: This is what I'm arguing. The
23 testimony already is that the existence of a red flag or two
24 red flags, there is nothing in the law that required anything
25 other than to investigate due diligence.

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1 THE COURT: No, I stop you there. That's not true.
2 That's not true. The red flag requires an investigation. And
3 an investigation that's required may result in suspicious
4 activity. Suspicious activity may result in termination. So,
5 it's not the only thing that you are required to do is do an
6 investigation. It depends on what the result of that
7 investigation is, and it depends on how serious the violations
8 are, and it depends on whether or not you have a further
9 responsibility to take action as a result of that
10 investigation.

11 (Continued on next page)
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1 MR. GOTTLIEB: But the testimony, as of right now, is
2 that there is no timeframe to take action on a red flag.

3 THE COURT: We're not arguing about timeframe. This
4 isn't an issue of timeframe. It never happened at all. It's
5 not a timely issue.

6 MR. GOTTLIEB: Here's the predicament, if while he is
7 there, there's a red flag, we're going to object. We know the
8 jury is entitled to hear that. We don't object that the jury
9 hears that while he was there, he didn't take any action.
10 That's come in ad nauseam, quite frankly, already. We're not
11 objecting to that.

12 What we object to is putting before the jury that
13 after he left, somebody else at a another time in continuing
14 the investigation, the due diligence, decided now to terminate
15 without us being able to have spoken to that person, conducted
16 our own investigation.

17 To now bring up what happens after he leaves, and
18 clearly the inference they're going to be asking the jury, look
19 what happened. As soon as he left, these guys, they terminated
20 them. It could have nothing to do at all towards any improper
21 activity while Mr. Doud was there. It could just be continuing
22 part of the due diligence.

23 THE COURT: See, the problem I have with that argument
24 is that, you want the opposite inference. You want that
25 inference. You want the inference that it was appropriate for

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1 him, and he had no responsibility to do anything else, other
2 than what he did. For you to put that at issue, puts at issue
3 whether or not his conduct could have been different and should
4 have been different, and based on the evidence that he had
5 before him.

6 Now, as I said, unless I hear a more specific offer of
7 proof, I don't know exactly what information they're relying
8 upon when they say others were terminated. But my position
9 is -- and I don't hear an argument from you that addresses that
10 position. My position is that to the extent that there were
11 red flags that existed at the time that Mr. Doud was at the
12 company and after he left the company, those red flags and
13 further investigation ended up in a rationale decision and an
14 appropriate decision to terminate those pharmacies or those
15 doctors, then I think that's admissible.

16 It goes to exactly what you want to argue the
17 opposite, that he really had no legal responsibility to do
18 anything different.

19 MR. GOTTLIEB: I don't think the government should be
20 able to say because what happens in the end of 2017 or 2018 is
21 proof of anything, anymore than it would be proper for us to
22 say what happened then shows something else.

23 THE COURT: I think you've already made that argument
24 in opening statement and with the first witness. You clearly
25 tried to imply and directly argue that the law doesn't require

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1 him to do anything further. The law is unspecific, so nobody
2 can really figure out what they're supposed to do. And you
3 want the inference that because there's no evidence that it was
4 appropriate for him to terminate or take different action that
5 somehow that is evidence of his innocence.

6 That's fine if you want to argue that, but it puts
7 them in a position to say, well, wait a minute. That's not
8 true. We have all of this evidence that was before him and
9 that evidence was sufficient for the company to terminate them,
10 those pharmacies, and that's exactly what happened.

11 And to the extent that they terminated those
12 pharmacies or those doctors based on information that was
13 gathered or pertained to the time period that he was at the
14 company, I don't see the argument that somehow the jury is not
15 entitled to know that.

16 If you want to say they're not entitled to hold
17 against Mr. Doud anything that they discovered that was going
18 on after he left and wasn't going on when he was there, you
19 might be able to convince me that should be limited in that
20 regard.

21 MR. GOTTLIEB: Can I ask this, your Honor. You asked
22 for the offer of proof. I think all of us are sort of arguing
23 in the dark right now. Can we wait. Let's hear the offer of
24 proof and then --

25 THE COURT: Let the government decide how and what

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1 they want to offer in evidence given those concerns that you
2 have and the concerns that I have. I don't get them prepped
3 for launch as they say. I guess that's an old person phrase. I
4 won't give them -- to simply just simply say, well, just
5 because after Mr. Doud left, they did some investigations and
6 gathered enough evidence that didn't exist at the time Mr. Doud
7 was there and Mr. Doud wouldn't have been able to figure out
8 because it didn't exist; that they can't hold that against
9 Mr. Doud for not doing a further investigation or notifying DEA
10 or identifying them as suspicious activity or terminating them
11 because he was unaware of those issues. Those issues didn't
12 exist when he was the president.

13 But to the extent that those issues existed when he
14 was there and to the extent that he would have been aware of
15 them and to the extent that after he left following the proper
16 procedures that the company determined that it was appropriate
17 to terminate these companies, I'm not sure that you're going to
18 convince me that you get to hide from that. From the fact that
19 based on information that existed at the time the company was
20 there, they terminated these companies for these reasons.

21 And the jury, they know what the criteria are about
22 how you're supposed to take action against these companies.
23 That's been gone through for the last two days, and they can
24 make their own judgment about that.

25 As I said, I'm not quite sure what the prejudice you

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1 say that you're trying to eliminate, and the prejudice is
2 clearly not he gets to say -- the jury doesn't get to know that
3 based on the information that was available to him at the time
4 once he left, that information clearly was information that
5 could support termination, and it did support a termination
6 decision.

7 MR. GOTTLIEB: Your Honor, just so that it's clear and
8 then I really will sit down. To be very blunt, what's going to
9 happen, my fear is, if stuff like that comes in post the time
10 he's there, the government stands up in front of the jury and
11 says, look what happened in late 2017, look what happened in
12 2018. They started doing it and this is proof; that when he
13 was there, that he was violating law and had the intent to
14 actually violate the law when he was CEO.

15 To ask this jury to make a decision based on what
16 other people did after he left without being able to
17 investigate what exactly those decisions were based upon,
18 severely prejudices Mr. Doud.

19 THE COURT: You just articulated it correctly. If
20 they can demonstrate that those decisions were based on
21 information that were known and existed when Mr. Doud was in
22 the company and known to Mr. Doud, then it's appropriate as far
23 as I'm concerned.

24 If you say it's information that wasn't known to
25 Mr. Doud or didn't exist when he was there and didn't happen

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1 until after he left, you're right. To the extent that they
2 think they can separate that or to the extent that they can't
3 or don't want to, I'll rule on whether or not they get to go
4 through some or all of that.

5 But Mr. Doud, he can't avoid the responsibility to
6 take appropriate action with regard to information that he had
7 at the time, and he cannot avoid and you cannot be in a
8 position to argue that the jury should conclude based on the
9 evidence that they have that he did the right thing.

10 If the jury doesn't have the true facts that other
11 people having this information made a different decision and
12 that was a reasonable decision based upon the rules and
13 regulations to terminate these individuals, to determine that
14 this rises not just to the level of red flags, that it rises to
15 suspicious activity and that they have a high responsibility to
16 either report it to DEA or terminate or stop the shipment. And
17 they're saying that's what happened after Mr. Doud left, and to
18 the extent that happened solely on the same information that
19 was available to Mr. Doud, Mr. Doud can't say, well, why is
20 that my responsibility. Of course it's his responsibility.

21 MR. GOTTLIEB: To quote your Honor, we had a sidebar
22 yesterday and you made it clear in talking to me that you
23 thought or you were saying that I can't argue to the jury that
24 because he complied with the CFR, he's not guilty.

25 And I said to your Honor yesterday and I'll repeat it

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1 now, that is not our position. Whether or not he filed a
2 suspicious order, whether or not the jury thinks that he did
3 enough is not the issue in this trial whether or not he
4 violated the CFR and the requirements. It's whether or not he
5 had the criminal intent to join a conspiracy to violate the
6 narcotics laws. So all of my objections go to that issue and
7 to that issue in particular to ask this jury to hold it against
8 him, and therefore to find as a piece of the puzzle that he
9 intended to illegally distribute narcotics. Because, in 2018,
10 some other people decided to file a suspicious order would be
11 turning the obligation, the obligation both the government and
12 the issues that we are going to address that is no matter what
13 he did, what he didn't do, he did not intend to join a
14 conspiracy to be a drug dealer.

15 THE COURT: Anything further from the government?

16 MR. ROOS: No. My only point would be going to the
17 relevancy about opening the door to yesterday's witness. I
18 don't have anything else to add. I think we understand your
19 Honor's viewpoint.

20 THE COURT: I'll take a look at the transcript. My
21 recollection of what has been argued and implied in front of
22 this jury is a lot closer than your arguing that you stayed
23 away from trying to imply that somehow that just confusing
24 rules and regulations, and he didn't have any further
25 responsibility to do anything else based on the information

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1 that he had. That seems to be a fairly straight forward
2 argument you made and now whether or not this is relevant to
3 the argument is fair game is a different question, but I'll
4 look at the transcript and you think about it overnight and the
5 government can give me a proffer as to what they want out of
6 this witness with regard to activity and decisions made after
7 Mr. Doud left and then I'll determine what the extent of that
8 testimony is.

9 MR. GOTTLIEB: Thank you. I just have one other --
10 actually, it's minor and I really debated whether or not I
11 should even raise it, but this is what I observed today.
12 Suddenly during the questioning this afternoon, our client
13 Mr. Doud is constantly being referred to as Doud.

14 Now, listen, I understand what's going on. I
15 understand the government and prosecutors very often try to
16 make it impersonal, try to make a defendant something else
17 other than worthy of any respect. I get that. I know that.

18 But certainly at this table everyone who we've
19 questioned, we've shown them the respect that every person is
20 entitled to, miss, mister. For a prosecutor to constantly refer
21 to our client by his last name, Doud, is making him -- is being
22 characterized by a government in a way when it should be, let's
23 just do the evidence and decide.

24 I would ask that he be referred to -- be given the
25 same respect as any other human being in this courtroom and be

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1 referred to as Mr. Doud or Larry Doud.

2 MR. ROOS: I mean, I think I called every person
3 Cullen, Pietruszewski, Doud, Bouk. Sometimes I can refer to
4 him as defendant, which I wasn't even doing. If your Honor
5 wants me to go through my Q and A and put in Laurence Doud the
6 II every time, I can do that. I mean, people sometimes speak
7 without sir, mister, doctor or whatever before it.

8 THE COURT: My attitude is this, that's not a ruling
9 that is appropriate for this Court. If you want to make that
10 argument to the jury that somehow they're disrespecting your
11 client, I mean, I don't know why that's relevant to whether
12 he's guilty or not guilty and whether or not he's referred to
13 by his first name, last name. I've seen defense attorney want
14 to sit next to their client and hand them Life Savers to
15 humanize them. That's not my issue.

16 Mr. Doud is a very well-respected businessman sitting
17 here in a suit and tie. I'm not going to get down to that kind
18 of minutia because that's not what this case should be decided
19 on. Unless they go wild and say something totally
20 inappropriate, I'm not going to give you a ruling to try to now
21 control the government, how much respect they want to show your
22 client. They hear your suggestion.

23 If they want to change their pattern, that's not
24 something that I had noticed, quite frankly, until you
25 mentioned it, so I don't think it's something the jury noticed.

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1 It's clearly not something the jury is going to use to either
2 convict or acquit your client. I'm sure of that.

3 All right. We will adjourn till tomorrow at 9:45.
4 We'll talk about this briefly tomorrow, get this witness back
5 on the stand and try to finish this witness and get to the next
6 witness.

7 (Adjourned until January 20, 2022, 9:45 a.m.)
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